

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA,)
Plaintiff,)
v.) Criminal Action
JASON JIMENEZ,) No. 1:19-cr-10278-RWZ-1
Defendant.)

BEFORE THE HONORABLE RYA W. ZOBEL
UNITED STATES DISTRICT JUDGE

EVIDENTIARY HEARING

January 8, 2020
9:01 a.m.

John J. Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, Massachusetts 02210

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17 ALSO PRESENT: AUSA Timothy Moran
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19
20 Proceedings reported and produced
21 by computer-aided stenography.

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1 P R O C E E D I N G S

2 THE CLERK: All rise, please.

3 THE COURT: Good morning. Please be seated.

4 THE CLERK: This is *United States versus Jason*
5 *Jimenez*, and it's Criminal 19-10278.

6 Could I ask counsel to identify themselves, please.

7 MR. PANICH: Good morning, Your Honor. Evan Panich
8 for the United States.

9 MR. MORAN: Timothy Moran, Your Honor. Good morning.

09:01 10 THE COURT: I don't have you on my list.

11 MR. MORAN: I'm just second chairing, Your Honor.

12 THE COURT: You don't have an appearance in the case?

13 MR. MORAN: I will. I can, if you'd like.

14 THE COURT: Well, I think so.

15 MR. MORAN: Okay.

16 MR. KELLY: Good morning, Your Honor. Paul Kelly on
17 behalf of the defendant, along with my colleague, Carmen
18 Francella. And Mr. Jason Jimenez is here with us at counsel
19 table, Your Honor.09:02 20 THE COURT: Okay. So this is the defendant's motion
21 to suppress. And, as I understand the papers, the issue is
22 what did the -- what did the agents, or whoever did this, know,
23 or what was the evidence concerning their knowledge of
24 Mr. Jimenez carrying drugs to allow them to rummage around his
25 crotch.

1 MR. PANICH: I'm not sure we put it quite that way,
2 but I agree with your characterization, that it's the agent's
3 knowledge that is relevant here.

4 THE COURT: And the government has the burden of
5 proof. So are you going to have witnesses?

6 MR. PANICH: Yes, Your Honor.

7 Before we begin, I just want to address one
8 administrative matter. Special Agent Keith Wilder is the case
9 agent on this case and is present in the courtroom.

09:02 10 THE COURT: You want him at counsel table?

11 MR. PANICH: I just want to make sure -- there's no
12 sequestration order, but I just want to imply to the Court that
13 he is likely to testify. He will be testifying today.

14 THE COURT: Was he one of the people there?

15 MR. PANICH: Yes, he was on part of the team that
16 conducted the arrest last year.

17 MR. KELLY: I think it's appropriate to have the
18 sequestration order in terms of not having the witnesses sit in
19 and listen to the other witnesses. I think it's a fairer
09:03 20 approach to keep them separate.

21 MR. PANICH: I don't object. If Mr. Kelly would
22 like --

23 THE COURT: Why don't you put him on as the first
24 witness?

25 MR. PANICH: I don't think logically that necessarily

1 makes sense. He's going to be last, but it's fine for him to
2 wait outside.

3 THE COURT: Okay. That's what we'll do.
4 Sequestration order is in effect.

5 And who -- do counsel wish to make any opening
6 statement?

7 MR. PANICH: No, Your Honor. We're prepared to
8 proceed without --

9 THE COURT: Okay. So who is the first witness?

09:03 10 MR. PANICH: It's Detective Radames Gonzalez of the
11 Lawrence Police Department.

12 THE CLERK: You are going to go around that way, sir,
13 please.

14 THE COURT: There's only one entrance to this.

15 THE CLERK: I am going to swear you in, sir.

16 (Witness sworn.)

17 THE WITNESS: I do.

18 THE CLERK: Okay. Sir, could I ask you to step in and
19 speak into the mic and state your name, spelling your last name
09:04 20 for the record, sir.

21 THE WITNESS: My name is Radames Gonzalez, and my last
22 name is spelled G-o-n-z-a-l-e-z.

23 THE COURT: Do you know Aida?

24 THE WITNESS: I do not.

25 THE COURT: You do not? Nobody knows Aida? You know

1 Aida, right?

2 MR. PANICH: I didn't hear you, Your Honor. Who is
3 it?

4 THE COURT: The opera *Aida* has its other main
5 character, Radames, right?

6 MR. PANICH: Mr. Kelly asked me that --

7 THE COURT: But save you the terrible end that they
8 have. Do you remember what the end is?

9 THE WITNESS: I don't.

09:05 10 THE COURT: They were locked into a cave with a big
11 rock in front of it because they were in love with each other,
12 and the king didn't like it.

13 We are not going to do anything of the sort.

14 THE WITNESS: I hope not.

15 RADAMES GONZALEZ, having been duly sworn by the Clerk,
16 was examined and testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PANICH:

19 Q. Against that backdrop, good morning, Detective Gonzalez.

09:05 20 How are you employed?

21 A. I am employed by the City of Lawrence, the Lawrence Police
22 Department specifically.

23 Q. And what is -- what do you do for the Lawrence Police
24 Department?

25 A. Currently my position with the Lawrence Police Department

1 is a narcotics investigator.

2 Q. And what is your rank with the Lawrence Police Department?

3 A. I am a detective with the Lawrence Police Department. And
4 just recently I was tasked out as a task force agent with the
5 FBI.

6 Q. How long have you served as a detective with the Lawrence
7 Police Department?

8 A. A little over five years.

9 Q. And what experience do you have in investigating narcotics
09:06 10 offenses?

11 A. Initially, at the academy level, there's a 40-hour block
12 on an introductory phase to do observing -- they expose you to
13 what drugs look like, some of the behaviors that come with it.
14 But a lot of the training and experience is gained with the
15 unit itself.

16 Q. And how long have you been acquiring that experience
17 investigating narcotics offenses?

18 A. It's always ongoing. In my FTO, field training officer,
19 experience, I had the honor of being with the sergeant who is
09:07 20 pretty savvy with street-level narcotics. So I did that for a
21 90-day period. And then when I got on the drug unit, we've
22 gone to PACE to conferences, which is a Proactive Counter
23 Enforcement, and then just being trained by the guys who are
24 currently on the unit.

25 Q. With respect to your experience, how long have you been

1 investigating those offenses?

2 A. Still, currently for five years. Our unit, primarily in
3 the first few years, we've made over 1,500 arrests that were
4 all drug related, specifically street-level crimes,
5 quality-of-life issues.

6 Q. How many drug deals would you say you've observed in your
7 time in law enforcement?

8 A. Physical, hand-to-hand transactions, I've experienced
9 probably over 100, received over 100 transactions, but there's
09:08 10 other ways that those transactions occur. I've witnessed over
11 100 of those within my five years of experience.

12 Q. What was your assignment on July 10th of last year?

13 A. At that time we -- the police department was collaborating
14 with multiple agencies to do a sting, to put more of an
15 emphasis so that they could try to make an impact on
16 street-quality life issues. They put a heavy emphasis on the
17 drug violation aspect of it.

18 Q. Which agencies was the Lawrence Police Department working
19 with last summer?

09:09 20 A. We had counter order initiative, Drug Enforcement Agency,
21 the FBI. We also had Methuen, North Andover Police
22 Departments' drug units involved.

23 Q. So describe, if you could, how that worked; what you did
24 in order to make more of an emphasis on street-level drug
25 offenses.

1 A. So the objective was to meet on a weekly basis. We would
2 rally up at a predetermined location. And they would assign
3 teams, and all these teams would be designated in an area that
4 we felt there was a high volume of drug activity. And those
5 units would be teamed up with about eight -- between 8 and 12
6 other detectives, and we would conduct surveillance in those
7 areas.

8 Q. Who was on your team back on July 10th of last year?

9 A. I was assigned to the FBI agents that worked out of the
09:10 10 Lowell residence areas.

11 Q. Specifically which agents?

12 A. That day I was partnered up with Agent Gary Cacace.

13 THE COURT: How do you spell the last name?

14 THE WITNESS: It's C-a-c-a-c-e, I believe.

15 THE COURT: Thank you. Is this team, what is normally
16 known as the task force? Or were you known as a team?

17 THE WITNESS: The team was not necessarily -- I guess
18 you could say they were kind of a task force in themselves, but
19 these teams were essentially the teams that met every single
09:10 20 week together. So I wasn't necessarily a task force agent, but
21 I was assisting them during the operations still as a detective
22 with the police department.

23 Q. What other agents, Detective Gonzalez, were part of the
24 team along with you and Special Agent Cacace?

25 A. Agent Keith Weidlich; Agent Adam Boynton; Task Force

1 Officer Daniel Cronin; Detective Mike Reardon and Detective
2 Mike Gilligan from the North Andover Police Department.

3 Q. Of those officers, who were you actually riding with on
4 July 10th?

5 A. Agent Gary Cacace.

6 MR. PANICH: Your Honor, I would like to put up on the
7 screen a document that I have premarked as Exhibit 1. With
8 your permission, may I approach and provide the clerk with a
9 copy? Or I can just put a copy on the projector. Whatever you
10 prefer.

09:11 10

11 THE COURT: You tell us what you want to do, and Lisa
12 will accommodate you, assuming our system will work.

13 THE CLERK: It is.

14 BY MR. PANICH:

15 Q. Detective Gonzalez, do you recognize what I've put on the
16 screen as Exhibit 1?

17 A. Yes.

Q. And what is on the screen?

19

19 A. It appears to be a map of the south Lawrence east area of
20 the city.

21 Q. What street am I pointing to here? What street is that?

22 A. That would be Portland Street.

23 Q. Okay. And how about here; what street is that?

24 A. Osgood Street.

Q. And then this street here, this diagonal one?

1 A. That's Loring Street.

2 Q. And this one here, which street is that?

3 A. Salem Street.

4 Q. Does it fairly and accurately reflect the section of
5 Lawrence that you were patrolling on July 10th of last year?

6 A. Yes.

7 MR. PANICH: Your Honor, I'd offer Exhibit 1 for
8 admission.

9 MR. KELLY: No objection.

09:13 10 (Government Exhibit 1 received in evidence.)

11 BY MR. PANICH:

12 Q. How would you characterize Portland Street, Detective
13 Gonzalez?

14 A. Portland Street is kind of an obscure street. Its
15 residences line up one side of the street. There's not many
16 houses on that side of the street. And then on the opposite
17 side of the street is the train tracks.

18 MR. PANICH: I would like to put up a second document.
19 It's been premarked as Exhibit 2.

09:14 20 BY MR. PANICH:

21 Q. Do you recognize what I have put up on the screen?

22 A. Yes.

23 Q. And what is that?

24 A. That would be Portland Street.

25 Q. Does it fairly and accurately reflect Portland Street?

1 A. Yes.

2 MR. PANICH: I offer this for admission, Exhibit 2.

3 MR. KELLY: No objection.

4 (Government Exhibit 2 received in evidence.)

5 BY MR. PANICH:

6 Q. So you mentioned -- strike that.

7 How, if at all, does the nature of this street enable
8 drug traffickers to conduct drug transactions on Portland
9 Street?

09:14 10 A. In my training and experience, a lot of the times when we
11 dealt with street-level drug transactions, the sources or the
12 dealers would choose locations that are relatively quiet, kind
13 of out of sight, out of mind, away from the public's eye.

14 Q. And how does Portland Street fit that bill?

15 A. Our drug unit has had a lot of experiences on Portland
16 Street. We have done numerous search warrants on houses over
17 there. We've done a few Terry stops, have made drug arrests
18 that stem from Portland Street itself.

19 Q. Okay. And what's a controlled buy?

09:15 20 A. A controlled buy would be a -- a controlled buy is
21 a -- how would I say it? It would be a buy that is under the
22 control of the detectives itself. We would have some sort of
23 confidential informant go in and make a purchase under our
24 direct supervision and obtain a predetermined sum amount of
25 illegal narcotics. That way we could just continue to gather

1 intelligence on the source or the dealer himself.

2 Or sometimes we'll go directly to what we call a
3 buy-bust where we have a CI doing a controlled buy, and then we
4 arrest the source immediately after.

5 Q. And has -- in a controlled buy, who typically selects the
6 location for the buy?

7 A. It's really circumstantial. It would depend on whether we
8 grab the source or the buyer at that location or if we
9 know -- the City of Lawrence, we have an anonymous tip line.
09:16 10 So we'll know well in advance which areas have resaturated with
11 a lot of drug traffic or foot traffic.

12 Q. How many times, if any, are you aware of dealers under
13 investigation who select Portland Street as the location for a
14 controlled buy?

15 A. You know, I could say with confidence that in my five
16 years of being on the job, we spend a lot of time on Portland
17 Street; I would say probably about 20 percent of our time every
18 year on Portland Street because of the drug activity over
19 there.

09:17 20 Q. What -- turning your attention back to July 10th of last
21 year, what did you observe on Portland Street during the course
22 of that afternoon?

23 A. Myself and Agent Cacace drove up the length of Portland
24 Street, and we noticed that there was a vehicle that was
25 idling, facing westbound on Portland Street parked on the train

1 track side.

2 Q. Do you recall what kind of car it was?

3 A. Yes.

4 Q. What kind of car was it?

5 A. It was a smaller compact vehicle, a Kia, I believe.

6 Q. And what did you observe relative to the Kia at that
7 point?

8 A. At that point it had been the only vehicle on the street
9 that was idling with somebody inside of it, so we just decided
09:18 10 to kind of park just on the same side of the street but having
11 some sort of vantage point to keep an eye on it.

12 Q. How many people were in the Kia?

13 A. One.

14 Q. Having observed the Kia for a time, what did you observe
15 after that?

16 A. After that, I noticed that a white male had crossed the
17 street. And he beelined for the vehicle and gained access into
18 the passenger's side of the vehicle.

19 Q. What, if anything, did you think about that at that
09:18 20 particular time?

21 A. It definitely heightened our senses.

22 Q. Why is that?

23 A. There's a lot of indicators that kind of come into play
24 when we try to develop a reasonable suspicion of probable cause
25 when it comes to drug interaction and drug behaviors. Seeing

1 that the male had just showed up on foot and he went directly
2 to the passenger's side and got in, you know, we felt that
3 there was suspicion that a drug transaction might be taking
4 place.

5 Also, while he was crossing the street, I overheard a
6 radio broadcast that he had money in his hand, which was
7 another --

8 THE COURT: Sorry. The radio broadcast said what?

9 THE WITNESS: We overheard a radio broadcast that the
09:19 10 male that was walking over to the vehicle had money in his
11 hand.

12 THE COURT: Excuse me. Were you parked and did you
13 see the car on -- where it would have been on this picture? I
14 mean, does this picture show the location that you observed?

15 THE WITNESS: Yes.

16 THE COURT: Where approximately is it?

17 THE WITNESS: So the Kia, there's a little retainer
18 wall to the right side of it.

19 THE COURT: Where that big tree is?

09:20 20 THE WITNESS: Yes. So across the street, the Kia was
21 parked --

22 THE COURT: Next to -- is it a railroad track?

23 THE WITNESS: Yes. He was parked on the side of the
24 railroad track.

25 THE COURT: Across from the big tree?

1 THE WITNESS: Correct.

2 THE COURT: And where did this person come from that
3 you just mentioned?

4 THE WITNESS: This person showed up on foot. We first
5 observed him when he first came into the street. Once he
6 came into --

7 THE COURT: From where?

8 THE WITNESS: We were on the same side of the street.

9 THE COURT: You were on the same side?

09:20 10 THE WITNESS: Yes.

11 THE COURT: Where did this person come from?

12 THE WITNESS: I didn't observe him. If I had to cast
13 an opinion, I would say that person walked up on foot.

14 THE COURT: If you didn't see him, that's okay. I
15 just want to -- so you were also across from the tree but
16 further back or in front of the Kia?

17 THE WITNESS: Yes, yes.

18 THE COURT: Thank you.

19 BY MR. PANICH:

09:20 20 Q. What, if any, significance did you ascribe to the money
21 that you heard about on the radio?

22 A. The money is one of the biggest components when it comes
23 to drug transactions, which is something we've often seen
24 during hand-to-hand transactions, whether it's foot-to-vehicle
25 or person-to-person.

1 Q. What, if any, research did you conduct into the Kia that
2 you observed the gentleman get in?

3 A. We -- initially the plate wasn't ran until the vehicle
4 started to go mobile. But we did run the plate, and we noticed
5 that the plate had come back to an organization which is
6 registered to Eshan companies.

7 Q. What do you know about Eshan?

8 A. Prior to this specific surveillance, I had a conversation
9 with an officer, Scott McCabe, who informed me that this
09:22 10 specific company might be involved with registering multiple
11 vehicles to harbor drug dealers to do their low-end running.

12 Q. You mentioned that the Kia went mobile. Where did it go?

13 A. So the -- as soon as he -- the passenger had gained
14 entrance, the vehicle went on the move. It drove up Portland
15 Street to Osgood Street.

16 MR. PANICH: I'm going to put Exhibit 1 back on the
17 screen.

18 BY MR. PANICH:

19 Q. So after it hit Osgood Street, where did it go?

09:22 20 A. It took a left onto Market Street.

21 Q. How about after that?

22 A. And then it took a right onto Loring Street. And then
23 from Loring Street, once it reached Salem Street, it took a
24 right. And then it pulled over about -- maybe about four or
25 five car lengths in onto Salem Street.

1 MR. PANICH: I am going to put on the screen what's
2 been marked as Exhibit 3.

3 BY MR. PANICH:

4 Q. Does this fairly and accurately characterize the route
5 that the Kia took?

6 A. Yes.

7 Q. Okay. And I know it's difficult to read, but can you tell
8 the distance that it traveled?

9 A. It's three-tenths of a mile.

09:23 10 THE COURT: Did you follow it?

11 THE WITNESS: Yes.

12 BY MR. PANICH:

13 Q. What happened once the Kia reached Salem Street?

14 A. Once he reached Salem Street, we observed the passenger
15 exit the vehicle; and then from that vehicle he walked directly
16 to another vehicle, gained access into the passenger's seat;
17 and then that vehicle pulled a U-turn right on Salem Street and
18 headed back towards Loring Street.

19 Q. I want to return to that in a moment, but what
09:24 20 significance did you ascribe to a ride of this length?

21 A. It was an awfully short distance to give somebody a ride.

22 Q. What difference does that make from your perspective as a
23 narcotics investigator?

24 A. One of the things that our drug unit always makes common
25 reference to is what we call as a meaningless ride to nowhere.

1 Q. What's a meaningless ride to nowhere?

2 A. So the meaningless ride to nowhere usually occurs when
3 either a drug source or the buyer shows up on scene, picks up,
4 you know, either party, and they take a ride. Usually, you
5 know, the distance is relatively a short distance, and either
6 the drug dealer or the source will be let out. There's no
7 stops in between. Nobody go -- they don't make any stops to go
8 to any stores or visit any residences.

9 Primarily what takes place inside of -- or what
10 happens within that ride, the drug transaction occurs, and then
11 both parties will be separated and be on their way.

12 Q. Why would a drug dealer want to use a brief meaningless
13 ride to nowhere to conduct a drug transaction?

14 A. Concealment primarily. You don't see the drug deal happen
15 in plain public's view.

16 Q. How many times have you seen something like this before?

17 A. I've -- in my experience, I would say that I encountered
18 that more than I witness hand-to-hand transactions.

19 Q. And having seen a ride like this, how often have you
20 subsequently discovered the drug transaction had taken place
21 during that ride?

22 A. The majority of the time we determine that a drug
23 transaction had taken place within inside of that vehicle.

24 Q. So at this point what did you think you had just seen?

25 A. I believe that there was a drug transaction that had taken

1 place within that -- the vehicle.

2 Q. So you mentioned earlier where the passenger had exited
3 the Kia.

4 MR. PANICH: I am going to put on what's been marked
5 as Exhibit 4.

6 BY MR. PANICH:

7 Q. Do you recognize the intersection here?

8 A. Yes.

9 Q. What intersection is that?

09:26 10 A. That's Loring Street, and a little further back is
11 Salem -- actually, this is Loring Street, and then this is
12 Salem Street.

13 Q. Okay. So I know that the labeling is confusing, but which
14 street is this right here?

15 A. That's Loring.

16 Q. And then this?

17 A. Salem.

18 Q. Okay. Where did you --

19 THE COURT: Excuse me. Do the streets in Lawrence
09:27 20 have these -- the names on them, written on the pavement like
21 this, or is that just the photograph?

22 THE WITNESS: That's the photograph, Your Honor.

23 MR. PANICH: I can represent that's what Google Maps
24 does when you go on Street View.

25 BY MR. PANICH:

1 Q. So what is this building here that I'm pointing to on the
2 left at this corner?

3 A. That's a convenience store or referenced as a bodega.

4 MR. PANICH: I put on the screen what's been marked as
5 Exhibit 5.

6 BY MR. PANICH:

7 Q. Do you recognize this intersection?

8 A. Yes.

9 Q. Is it the same intersection, just zoomed in?

09:28 10 A. Correct. It's further west.

11 Q. So can you describe where you saw the passenger exit the
12 Kia?

13 A. So there's -- it looks like there's a pole to the right.

14 Q. This right here?

15 A. Exactly.

16 Q. Okay.

17 A. So the vehicle pulled up a little beyond that pole, that
18 light pole.

19 Q. And when the passenger exited the Kia, which direction did
09:28 20 he go?

21 A. The passenger exited the Kia and walked to a vehicle that
22 was parked right in front of it.

23 Q. And did you see what kind of car that was that he got
24 into?

25 A. It appeared that it was a dark-colored Buick.

1 MR. PANICH: Your Honor, I would like to offer Exhibit
2 5 for admission.

3 MR. KELLY: No objection.

4 MR. PANICH: And I don't think I offered Exhibit 4. I
5 would like to offer that, as well.

6 THE CLERK: Or 3.

7 MR. PANICH: 3, 4 and 5, Your Honor.

8 THE COURT: Okay.

9 (Government Exhibits 3 through 5 received in
09:29 10 evidence.)

11 BY MR. PANICH:

12 Q. After you saw the passenger exit the vehicle, what did you
13 do?

14 A. The radios were kind of horrible in that area, so we were
15 trying to give out a live feed of what we believed was
16 occurring. So we gave out a radio transmission of the vehicle
17 that was in front of us, being occupied by two other males.
18 Myself and Agent Gary Cacace, we decided that we wanted to stay
19 with the Kia and the subject inside that vehicle.

09:29 20 Q. And so what did -- did you do that?

21 A. We followed him away. We drove up Salem Street. We ended
22 up -- my knowledge isn't very clear as to -- at some point we
23 ended up on Blanchard Street behind the Haffner's gas station.
24 So we either took a right on Osgood Street or South Union
25 Street. But once we ended up on Merrimack Street -- is it

1 Merrimack? No. It's Market by Jackson Lumber. And as we
2 approached Haffner's gas station, myself and Agent Cacace kind
3 of -- we noticed that the subject in that vehicle was like
4 really fixated on that rearview mirror.

5 Q. Before we get to that, I am going to put on the screen
6 what's been marked as Exhibit 6. This is a little difficult to
7 see. This is zoomed out.

8 THE COURT: How can you tell whether a driver in front
9 of you is fixated on the rearview mirror? I'm asking for my
09:31 10 own benefit.

11 THE WITNESS: At that point -- this is something that
12 I often have a lot of experience with. At that point you could
13 tell that his eyes aren't on the road. You can actually see
14 that his eyes are looking through the rearview mirror. So it's
15 almost as if he's gazing towards --

16 THE COURT: You mean you can see on the mirror --

17 THE WITNESS: Yes.

18 THE COURT: -- his eyes?

19 THE WITNESS: Yes. And the side-view mirror, as well.
09:31 20 You could see that they're not facing forward, but they're
21 looking up, and they are also looking to the left to the
22 side-view mirror, as well.

23 THE COURT: I thought that was a sign of careful
24 driving.

25 THE WITNESS: Not if you're going forward.

1 BY MR. PANICH:

2 Q. How long did you observe the driver as you were following
3 him?

4 A. I mean, we stayed with him initially from that point that
5 he had pulled onto Salem Street until we initiated contact with
6 him.

7 Q. And how long in minutes?

8 A. I would say probably no less than two minutes.

9 Q. And so how did that -- what happened after you followed
09:32 10 him for two minutes?

11 A. We got to the end of Blanchard and Salem Street. Right
12 before we got to Salem Street, we decided that we wanted to
13 activate our lights and sirens.

14 Q. Why is that?

15 A. My hope was that he would pull over. We felt like there
16 was just enough space for him to pull over. But once I
17 initiated the lights and sirens, he took a right onto Salem
18 Street, right before there's a bridge that was located right
19 there. I felt like he could have pulled over beforehand, but
09:32 20 he just kept on driving until he got over the bridge. And then
21 once he ended up in front of St. Patrick's Church, right before
22 Carter Street, he pulled over at that point.

23 Q. Where did you position your car relative to the Kia?

24 A. I ended up pulling ahead of him.

25 Q. Why?

1 A. The reason for it was because during that time, as soon as
2 I activated the lights and sirens, seeing that he was just
3 really fixated on us behind him -- as soon as we activated the
4 lights and he knew that we were behind him, I could observe
5 that there was a lot of movement from the driver's side area.
6 I could see that he was shifting. I could see his shoulders;
7 they were rising up and above. There was just -- there was a
8 lot of movement from the time that I had activated the lights
9 until the time that he decided to stop.

09:33 10 Q. What significance did you see in the shifting?

11 A. To me it looked like he could be concealing something.

12 Q. Okay.

13 A. My thought process by going ahead of him was I didn't know
14 if, you know, if his thought process was to take off once we
15 pulled him over if we were still behind him, as well.

16 Q. From the time you turned on your lights and sirens to the
17 time he actually stopped, how much time actually transpired?
18 Was it immediate?

19 A. It wasn't immediate, no.

09:34 20 Q. After he stopped the Kia, what did you do next?

21 A. I -- we had gave the radio transmission out to the other
22 area cars to let them know that we had stopped the vehicle just
23 past the bridge. And I exited the driver's side and Agent Gary
24 Cacace exited the passenger's side, and I walked right up to
25 the driver's side window.

1 Q. Okay. Do you recognize the driver sitting in court today?

2 A. Yes.

3 Q. Who is it?

4 A. He's sitting to my right, wearing a white-collared shirt
5 and a beard.

6 MR. PANICH: Let the record reflect that Detective
7 Gonzalez has identified the defendant, Jason Jimenez.

8 THE COURT: Okay.

9 BY MR. PANICH:

09:35 10 Q. Once he stopped and you got out of the car, what did you
11 observe about the defendant's demeanor?

12 A. Well, when I drove -- when I drove by him, I could still
13 see that there was a little bit of movement. As I approached,
14 he was nervous but not moving as much as he was when we had
15 first initiated contact.

16 Q. And what concerns, if any, did you have about that?

17 A. Well, there's two things: The first thing, always for us,
18 is that it's a huge safety issue. We just want to make sure
19 that there's nothing within his control to hurt us. So we're
09:36 20 thinking weapons, automatically.

21 And then the other thing is, just based on the
22 indications of us doing a drug investigation, my assumption
23 would be that he was shifting around so he could try to conceal
24 something.

25 Q. What's your ordinary practice when you first approach a

1 suspect to question him?

2 A. For us, our drug unit, we're very heavy because we try to
3 sit on a lot of these investigations long enough where as soon
4 as we make contact with the suspect, we immediately go into
5 Miranda.

6 Q. And why is that if the suspect is not yet cuffed?

7 A. A lot of it is because we have all these observations in
8 hand, and we feel that that questioning is going to lead into
9 the investigation itself and that they might say something to
09:37 10 incriminate themselves.

11 Q. So how do you -- do you typically offer the defendant his
12 Miranda rights?

13 A. I always read it from a card.

14 MR. PANICH: I am going to put up on the screen what I
15 have now marked as Exhibit 6. It's two pages.

16 BY MR. PANICH:

17 Q. Do you recognize what I have put on the screen?

18 A. Yes.

19 Q. What is it?

09:37 20 A. It's a Lawrence Police Department Miranda warning.

21 THE COURT: Excuse me. I'm not clear. When you
22 stopped in front of the car, then you went back to the Kia?

23 THE WITNESS: Yes.

24 THE COURT: And what happened next? Did the defendant
25 get out of the car? Did you tell him to get out? Where does

1 the Miranda warning fit with respect to the defendant's
2 position?

3 THE WITNESS: So when I get to the vehicle, Your
4 Honor, I -- as soon as I make contact, I believe that I had the
5 door open at this time, and then I read him the Miranda
6 warning.

7 THE COURT: Before you said anything else?

8 THE WITNESS: Yes.

9 BY MR. PANICH:

09:38 10 Q. And is this -- does this -- does Exhibit 6, excuse me --
11 is this the same card that you read from when you're giving
12 Miranda warnings?

13 A. Yes.

14 MR. PANICH: Your Honor, I'd offer Exhibit 6 for
15 admission.

16 THE COURT: I'm sure there's no objection.

17 (Government Exhibit 6 received in evidence.)

18 BY MR. PANICH:

19 Q. Do you use this card or a facsimile of it in offering the
09:38 20 defendant his Miranda rights?

21 A. Correct.

22 Q. What happened after you offered him his Miranda warnings?

23 A. At this time we had confronted him. We asked him if there
24 was somebody -- actually, what I do is I relay the facts. I
25 let them know that I'm a narcotics investigator. I actually

1 told him what I had observed, that we had observed him pick
2 somebody up, and that he drove them for a short distance and
3 then he dropped them off.

4 Q. What did he say about that?

5 A. At first he denied that there was even anybody in his
6 vehicle.

7 Q. So what did you do?

8 A. We then -- you know, we asked him again if he wanted to
9 shoot straight with us. And then he said that he did, in fact,
09:39 10 pick somebody up to give them a ride. And during that
11 time -- my focus was a little -- I was a little uneasy because
12 I didn't know if subconsciously he just kept on -- his right
13 arm kept on going in between his legs.

14 Q. Did he have a phone on him at that time?

15 A. Yes.

16 Q. Okay. And what did he do with the phone?

17 A. Once I laid out the groundwork from where we were coming
18 from, he asked if he could record the whole interaction between
19 him and I, and I said that he was more than welcome to. The
09:39 20 only thing I didn't want him to do was to have the phone in his
21 hand because he was the target of the investigation.

22 Q. So where did he put the phone?

23 A. He put the phone on the center console.

24 Q. Did he activate the phone or request to record before or
25 after the Miranda warnings?

1 A. I honestly don't recall if I did it on video or not.

2 Q. But where did he put the phone?

3 A. He put it on the center console.

4 Q. So after he acknowledged that he did give an individual a
5 ride, where did he say he had gave that individual a ride to?

6 A. His -- he had a lot of stories. And the thing was -- is
7 that I couldn't really keep track of which one he was, you
8 know, trying to relay to me as it related to what we had
9 witnessed.

09:40 10 So at one point he said that he came from Wal-Mart.

11 At one point he said that he gave his friend a ride to the
12 train station. There were just many stories that I couldn't
13 really keep track of a lot of them, but those were just two of
14 the ones that I do recall.

15 Q. But, in any event, did you observe where the passenger had
16 actually gone?

17 A. Yes.

18 Q. And where was that?

19 A. He actually got dropped off on Salem Street and gained
09:41 20 access into another vehicle.

21 Q. So after having heard these explanations from the
22 defendant, what did you do?

23 A. At that point, just based on him just going to the center
24 of his legs, I asked him if he could get out of the car. He
25 did so. He was cooperative in that manner.

1 As he exited, I noticed that he was kind of a big
2 kid, pretty athletic. And, you know, for us, from our view, we
3 do encounter people running from us, so that was kind of going
4 through my head. So I asked him to walk to the back of the
5 car. But as he walked there, I walked with him. And I grabbed
6 the back of his belt, and I escorted him to the back of the
7 vehicle.

8 Q. Why did you ask him to get out of the car in the first
9 place?

09:42 10 A. Because the movement with his hand -- I just wasn't
11 entirely comfortable with him just keeping, you know, throwing
12 that hand in between his legs.

13 Q. When you got him out of the car, did you observe him
14 carrying anything else?

15 A. He wasn't carrying anything. But when I looked at the
16 seat where he was, he had another phone.

17 Q. The phone in addition to the one that he had been
18 recording with?

19 A. Correct. It was a second phone.

09:42 20 Q. What did you think about the existence of a second phone?

21 A. It's just one of many other indicators for us where we --
22 more often than not when we lock up the source specifically or
23 the drug dealer, they carry multiple phones. One phone is for
24 personal use, and then the second phone is usually for
25 business.

1 Q. And by "business," what do you mean?

2 A. Those calls -- those phones are primarily used for drug
3 runners to either get directed or make phone calls to, you
4 know, the main source.

5 Q. Finally, where was the first phone, the one that he used
6 to record the interaction, where was that once he was out of
7 the car?

8 A. It stayed in the center console.

9 Q. So what concerns, if any, did you have about your safety?

09:43 10 THE COURT: Excuse me. Does that mean that there was
11 no recording of any conversation when he went to the back of
12 the car?

13 THE WITNESS: I don't believe so unless the audio
14 might have gotten picked up. But I know, you know, for
15 certainty that the phone did stay inside the vehicle.

16 BY MR. PANICH:

17 Q. Detective Gonzalez, what, if any, concerns did you have
18 about your safety at that point?

19 A. Well, at that point, just based on all the movement that
09:44 20 was being done inside of the vehicle, it's always a threat for
21 us once they're outside. So, you know, once we put him to
22 the -- when we brought him to the rear of the car, we decided
23 that we wanted to pat frisk him.

24 Q. And how did the defendant physically react to the pat
25 frisk?

1 A. Initially I was able to do a pat frisk, but then I noticed
2 that there was just -- there was a hard object by his left
3 pocket and I -- you know, I just -- I stayed there, you know,
4 for a couple of seconds. And I'm like, okay, there's
5 definitely something here.

6 Q. Did he physically react to your touching the hard object?

7 A. Yes.

8 Q. How?

9 A. He -- the second time that I had brought it to -- because
09:45 10 some of the agents just kind of started to filter on, so the
11 second time that we decided, I'm like, there's definitely
12 something weird. You could even visually see that it was
13 weird. So when I went to go back in to try to pat it down, he
14 pulled his hips out. And then, you know, at that time I
15 confronted him. I said, "Okay. Listen, you know, the jig is
16 up."

17 Q. Before we get to that -- I apologize.

18 A. Yes.

19 Q. You mentioned two pat frisks?

09:45 20 A. Yes.

21 Q. Can you explain that?

22 A. Well, because we -- I think I was trying to confirm to
23 myself that there was definitely something that was out of
24 place there. It was a hard object. It wasn't something that I
25 would typically feel normally. I've done thousands and

1 thousands of pat frisks, and I knew that there was just an odd
2 object that didn't belong there.

3 Q. So why did you feel the need, then, to do a second pat
4 frisk?

5 A. It was just to confirm the first pat frisk, to verify.

6 Q. With respect to the first pat frisk, was there anything
7 else you felt?

8 A. Yes.

9 Q. What?

09:46 10 A. In his left pocket he had, like, a circular cylinder. And
11 I had asked him what it was, and he said that it was a lip
12 balm, a ChapStick.

13 Q. What did you do with respect to that?

14 A. I asked him if I could pull it out, and he said that I
15 could. And when I pulled it out, it was exactly what he said
16 it was.

17 Q. By the way, who -- what was Special Agent Cacace doing at
18 this time?

19 A. He was with me. He was covering me.

09:46 20 Q. And you mentioned earlier, I think, before I interrupted
21 you, and I apologize for that, you said something to the
22 defendant. What was that?

23 A. Yes. I made a reference. I said, "Listen, you know, I
24 think that you sold that guy drugs."

25 And he said, "It is what it is," almost giving us a

1 confirmation that, you know, there was something amiss.

2 Q. What did you do in response to that?

3 A. So in response to that -- Mike Reardon was there, as well,
4 with Task Force Agent Cronin.

5 Q. When did they arrive?

6 A. They arrived -- I want to say it was during the pat frisk
7 when they arrived. They actually -- they confirmed. They
8 corroborated my observations, as well, by seeing the bulge.
9 And then Detective Mike Reardon pulled the item up from his
09:47 10 pants.

11 MR. PANICH: May I have a moment, Your Honor?

12 THE COURT: I'm sorry?

13 MR. PANICH: May I have one moment?

14 THE COURT: Yes.

15 (Attorneys confer.)

16 BY MR. PANICH:

17 Q. Detective Gonzalez, did you see what the item was that he
18 had recovered?

19 THE COURT: I'm sorry. Who did the discovery
09:47 20 search -- the discovery pat frisk?

21 THE WITNESS: I believe it was Detective Mike Reardon.

22 THE COURT: So you did the two, and then somebody else
23 did the third?

24 THE WITNESS: Yes.

25 BY MR. PANICH:

1 Q. And what the judge just referred to as the third, where
2 was that in relation to him saying, "It is what it is"?

3 A. Yes.

4 Q. Sorry. Was it before -- when he said, "It is what it is,"
5 did Detective Reardon recover the item after that?

6 A. Yes, correct.

7 Q. Did you see what he had recovered?

8 A. Yes.

9 Q. What was it?

09:48 10 A. We pulled out a baseball size of illegal narcotics.

11 Q. And how did you recognize it as illegal narcotics?

12 A. Just based on our training and experience and the
13 packaging.

14 MR. PANICH: Okay. Your Honor, I don't have any
15 further questions for Detective Gonzalez.

16 THE COURT: Mr. Kelly?

17 MR. KELLY: Would you like me to do it from the
18 podium, Your Honor?

19 THE COURT: I'm sorry?

09:49 20 MR. KELLY: Would you like me to do it from the
21 podium?

22 THE COURT: It's up to you. If you do it from some
23 distance, the witness tends to be loud enough so I can hear
24 him.

25 MR. KELLY: Okay.

CROSS-EXAMINATION

BY MR. KELLY:

Q. Good morning, Detective Gonzalez. My name is Paul Kelly. I'm the attorney for Mr. Jimenez.

Let me ask you: Have you ever testified in federal court before, sir?

A. No, sir.

Q. So you were a -- you've been a detective or a narcotics investigator for about five years?

A. Yes.

Q. How old are you, sir?

A. 42.

Q. Okay. And in the summer of 2019, you had been a narcotics investigator for about four-and-a-half years?

A. Correct.

Q. And your training consisted of, you said, a 90-day training with some officer, attending a couple of conferences, and then largely on-the-job training?

A. Yes.

Q. And that you've observed over 100 drug deals or had been involved in them to some respect?

A. Correct.

Q. Now, are you aware that after the arrest of Mr. Jimenez on July 10th of 2019 that the United States Attorney's Office and I believe your department in Lawrence issued a press release

1 trumpeting their activities that particular day?

2 MR. PANICH: Objection, relevance.

3 THE COURT: I don't know.

4 BY MR. KELLY:

5 Q. Are you aware of that?

6 A. I'm aware that they did a press release at the end of the
7 sting operation, yes.

8 Q. And --

9 MR. KELLY: If I could, Your Honor, if I could
09:50 10 approach? Give this to the Court.

11 THE CLERK: Is this an exhibit?

12 THE COURT: It's okay. I can see it on the screen.

13 MR. KELLY: Your Honor, I would like to mark this.

14 Use letters A, B, C, D?

15 THE CLERK: Yes. This is A.

16 THE COURT: Any objection?

17 MR. PANICH: I'm really not sure of the relevance,
18 Judge.

19 THE COURT: At least for now; otherwise, it seems to
09:51 20 be somewhat relevant. So we'll see. We'll mark it for
21 Defendant Exhibit A, right?

22 THE CLERK: Yes.

23 (Defendant Exhibit A received in evidence.)

24 BY MR. KELLY:

25 Q. So this press release was issued in September but talks

1 about an operation in the Merrimack Valley, which is the same
2 operation that you were making reference to when you described
3 these various weekly meetings and some of the efforts that was
4 being made by the task force and the related departments,
5 correct?

6 A. Correct.

7 Q. And in this -- in Pages 2 and 3 and 4, there's a list of
8 38 individuals who were arrested and charged, which is what is
9 captured by the title there of Exhibit A. So this was what we
09:52 10 would describe as a big sweep, right?

11 A. Yes.

12 Q. And in the last paragraph there on Page 4, it lists the
13 various departments that participated in these law enforcement
14 efforts?

15 A. Yes.

16 Q. And this arrest of Mr. Jimenez was part of that. In fact,
17 his name is listed here as Number 19, correct?

18 A. Yes.

19 Q. Now, let me take you to the, first of all, the location
09:52 20 here that we're talking about on Portland Street. This is
21 really a residential area. I mean, when you go down this
22 Osgood Street, as we saw on the map in Exhibit 1, there are a
23 series of residential homes; there's a baseball field. It's a
24 suburban area; is it not?

25 A. It's suburban. But it's a little bit on the light side so

1 not many houses over there.

2 Q. So this appeared -- I'm sorry -- I apologize for
3 the -- maybe I can zoom this in here a little bit.

4 MR. PANICH: I have a copy.

5 MR. KELLY: You have a better copy?

6 BY MR. KELLY:

7 Q. So down through this part, these are all homes, correct?

8 A. Correct.

9 Q. And this is like a baseball field --

09:54 10 A. Yes.

11 Q. -- right?

12 And there are some schools in the area, correct?

13 A. Not in that specific area, not in that block, or the grid.

14 Q. Okay. Where is the nearest school?

15 A. It's on the flip side of the Shawsheen River Trail.

16 Q. And this is the railroad tracks that you pointed out?

17 A. Correct.

18 Q. And on the other side of the railroad tracks, which you
19 can't really see on this, are industrial warehouses and things
09:54 20 of that nature, correct?

21 A. Yes.

22 Q. Now, isn't it the case, Detective Gonzalez, that the first
23 thing that you observed when you went out to do work in this
24 particular area on this day was you observed a dark-colored
25 Buick automobile, correct?

1 A. I didn't observe the dark Buick automobile, no.

2 Q. I'm sorry. Say that again.

3 A. I didn't see the dark-colored Buick until the passenger
4 was let off.

5 Q. You were riding with Special Agent Cacace of the FBI?

6 A. Correct.

7 Q. And were you the driver?

8 A. Yes.

9 MR. KELLY: Your Honor, if we could approach. And I
09:55 10 would like to mark as Exhibit B this FBI investigative report.

11 MR. PANICH: Objection, hearsay.

12 THE COURT: Well, I don't know. We'll mark it for
13 identification, but I don't know even what he's going to do
14 with it.

15 MR. PANICH: Okay. I'll defer.

16 THE COURT: B for identification.

17 (Defendant Exhibit B marked for identification.)

18 BY MR. KELLY:

19 Q. I am showing you the first page of a report, which at the
09:56 20 top here you can see it says on July 10th that Supervisory
21 Agent Cacace and yourself initiated a traffic stop, right? And
22 have you read this report by Agent Cacace?

23 A. Yes, I've reviewed it.

24 Q. And what he says right at the start here in this paragraph
25 that begins at approximately 5:00 p.m. --

1 THE COURT: This is being offered for what purpose?

2 MR. KELLY: I want to just ask him about what he
3 observed and what he's told us about, because what he told us
4 about was that --

5 THE COURT: But this is somebody else's document.

6 MR. PANICH: Your Honor, both of the individuals who
7 have signed this report, if Mr. Kelly scrolls to the bottom,
8 are here today.

9 THE COURT: Well, they are hearsay with respect to
09:57 10 this witness. Is either of them going to be a witness?

11 MR. PANICH: Yes.

12 THE COURT: Well, I mean, I don't know how you can --

13 MR. KELLY: I can move this along, Your Honor.

14 THE COURT: Yeah, okay.

15 BY MR. KELLY:

16 Q. Are you aware, Detective Gonzalez, that Special Agent
17 Cacace in his report indicates that the first thing that you
18 observed when you went out that day at roughly 5:00 p.m. was a
19 dark-colored Buick sedan?

09:57 20 MR. PANICH: Your Honor, he is reading from the
21 report.

22 THE COURT: That may be the agent's observation. He
23 had a different one. So I don't know how you --

24 BY MR. KELLY:

25 Q. That's not your testimony, that the first thing that you

1 observed was a dark-colored sedan?

2 A. No. I observed it at the last part of the incident.

3 Q. So you said that what you observed is a car that was
4 parked and idling on Portland Street, with one occupant inside?

5 A. Yes. It was the only vehicle on the street.

6 Q. Right. Did you happen to observe what the occupant was
7 doing?

8 A. I did not. It looked --

9 Q. Did you see whether or not he was texting or using his
09:58 10 cell phone?

11 A. No.

12 Q. You could not see that?

13 A. No.

14 Q. Did you drive by the vehicle at some point to get a closer
15 view?

16 A. I drove by once, and that's when I noticed him. And then
17 I set up surveillance on it.

18 Q. And then at some point -- first of all, isn't it a fact,
19 sir, that there were a number of agents out on the street on
09:58 20 this particular day as part of this operation, roughly 10 or 12
21 agents?

22 A. Yes.

23 Q. And how many different cars were being used by law
24 enforcement that day, if you know?

25 A. I would say a bare minimum. There was probably about five

1 of us.

2 Q. Okay. So you've got all kinds of different law
3 enforcement cars moving around?

4 A. Yes.

5 Q. And prior to seeing this Kia parked on Portland Street,
6 were you involved in radio transmissions talking to the various
7 law enforcement officers in these other cars?

8 A. We were doing our best --

9 Q. Okay.

09:59 10 A. -- because the radios -- I had testified the radios were
11 really choppy in that section.

12 Q. And prior to the time that you observed this person
13 walking, this white male walking up the street, had you heard
14 over the radio from any of your fellow officers observations of
15 a person walking up the street?

16 A. No. We made that observation ourselves, that he
17 was -- once he was crossing the street, we made that
18 observation.

19 Q. And do you know from what street that this person came?

09:59 20 A. I would assume that he came from Osgood Street.

21 Q. Okay. Describe the person that you saw.

22 A. He was wearing a flannel shirt, a hat, and black pants.

23 Q. Okay. This was July? It was a warm day that day?

24 A. Yes.

25 Q. Can you describe the weather?

1 A. Yes. It was nice. The sun was out.

2 Q. And your recollection is that he was wearing a flannel
3 shirt and a hat?

4 A. Yes.

5 Q. And --

6 A. It was a polo-style hat. It wasn't like a winter cap.

7 Q. Okay. Did you -- you said that you overheard a radio
8 broadcast that one of your fellow officers observed this person
9 walking who appeared to have money in his hand; is that what
10:00 10 you told us?

11 A. Yes.

12 Q. Now, in your experience, would that be common, someone
13 heading up the street to do a drug deal would carry money
14 openly in his hand?

15 A. Yes.

16 Q. That would be common in your experience, sir?

17 A. You'd be very surprised.

18 Q. I would be.

19 And then you said that you ran the plate, or you had
10:01 20 somebody run the plate?

21 A. Yes.

22 Q. And it came back to something called Eshan corporation?

23 A. Correct.

24 Q. And then somebody told you over the radio, somebody by the
25 name of Scott McCabe, that this company was suspicious in some

1 regard because they rented vehicles to people involved in drug
2 transactions?

3 MR. PANICH: Objection. I think that mischaracterizes
4 his prior testimony in terms of when he learned that.

5 THE COURT: Well, he can tell us yes or no.

6 THE WITNESS: I had that conversation a week before
7 with Scott McCabe, Officer Scott McCabe, detective now.

8 BY MR. KELLY:

9 Q. Who is Scott McCabe?

10:01 10 A. He is a detective now.

11 Q. So what brought up the conversation about Eshan
12 corporation a week before?

13 A. Well, because he was giving me -- he was passing on
14 intelligence, because I'm on the drug unit, and he said he made
15 an encounter to corroborate that they're using that business to
16 harbor drug runners to make drug sales or illegal transactions.

17 Q. Have you ever been to Eshan corporation?

18 A. I have not.

19 Q. Do you know anything about it?

10:02 20 A. I do not.

21 MR. KELLY: Your Honor, if we could approach and mark
22 a series of documents as Exhibit C.

23 THE COURT: These are not in evidence, right, as yet?

24 MR. KELLY: Well, Your Honor, I would offer these

25 documents. What these are, Your Honor, the first document is

1 the incorporation records from the State of Massachusetts for
2 Eshan, Inc., showing that the company is owned and operated by
3 this Mr. Sam Eboigbe. I don't know how he pronounces his name.
4 And the Articles of Incorporation for the company.

5 The third document, Your Honor, is a LinkedIn for
6 Mr. Eboigbe who was the proprietor of this business who also
7 runs a company called J&S Transportation.

8 THE COURT: Well, but what is this being offered for?
9 As I understand the testimony of the witness during the direct,
10:03 10 he was told by somebody that Eshan is a corporation that deals
11 with drug dealers, that somehow helps drug dealers.

12 MR. KELLY: The relevance is, Your Honor, that this is
13 a legitimate business. This is a rental car agency that rents
14 cars, not unlike Hertz or Avis or Enterprise. It rents cars to
15 people.

16 THE COURT: So even if that's the case, I don't know
17 that that can attack this witness's credibility as to what he
18 learned at the time, which is the relevant issue here, isn't
19 it? I mean, I think you can -- I'll take these documents as
20 part of the evidence, but I don't think that they're
21 particularly relevant to what the witness knew at the time that
22 he was doing his business.

23 (Defendant Exhibit C received in evidence.)

24 BY MR. KELLY:

25 Q. So you relied on something you had heard from another

1 officer days before, but you had no direct or personal
2 knowledge of Eshan, Incorporated?

3 A. I had no direct knowledge.

4 MR. PANICH: Your Honor, I, just for the record,
5 object to the admission of these documents, particularly in
6 light of the detective's testimony. He didn't know about it.

7 THE COURT: We'll have them there, but I --

8 BY MR. KELLY:

9 Q. Well, you know that --

10:04 10 THE COURT: The issue is what he knew at the time and
11 what motivated him to do whatever he did.

12 BY MR. KELLY:

13 Q. Simply because it was a rental car, in your view, made it
14 suspicious; is that what you are telling us?

15 A. It's common for drug dealers to use rental vehicles so
16 that way they could -- that way they're not easily
17 identifiable, so yes.

18 Q. And rental car companies, sir, as you know, you know, they
19 don't ask people about whether they're drug dealers or they
10:05 20 have criminal records at the time they rent the vehicle,
21 correct?

22 A. I don't know what they do.

23 Q. If this was a rental vehicle from Hertz or Avis or
24 Enterprise or Budget, would that have been suspicious to you?

25 A. Just based on the context that I had experience with drug

1 dealers renting vehicles and if there's a commonality, yes, I
2 would say it's suspicious.

3 Q. So you observed this person that was walking get into the
4 car, the Kia, and then the Kia immediately left the curb and
5 drove three-tenths of a mile, correct?

6 A. Right.

7 Q. And it went the route you described, down Loring Street,
8 turned the corner at Salem Street, and pulled over by the
9 telephone pole that we saw on the map?

10:05 10 A. Correct.

11 Q. And at that point a white male occupant IN the passenger'S
12 seat got out of the car?

13 A. Correct.

14 Q. And directly across the street, as we saw on the
15 photograph --

16 MR. KELLY: Do you have that Exhibit 2 or 3 or
17 whatever it was?

18 BY MR. KELLY:

19 Q. So this is the image -- this is Loring Street. This is
10:06 20 Salem Street, correct?

21 A. Correct.

22 Q. And we saw a closer version here on Exhibit 5 that -- I
23 was showing you Exhibit 4 before -- but right here, just a
24 little bit off the page, is Hernandez Market?

25 A. Correct.

1 Q. It's a market which you described as a bodega?

2 A. Yes.

3 Q. There's a crosswalk right where the white car is. So if
4 you dropped somebody off there, they could literally walk
5 across the crosswalk to these set of stores, including the
6 market, correct?

7 A. If they dropped them off at the crosswalk, correct.

8 Q. Right. And you don't know, do you, sir, that the person
9 that was driving the Kia was simply dropping this person off
10:07 10 across the street from the market?

11 A. No, because the passenger gained entrance into the other
12 vehicle, and the other vehicle -- we broadcast that the vehicle
13 was on the move, and the other agents couldn't find the other
14 vehicle.

15 Q. Now --

16 A. Which --

17 Q. -- at that point, sir, the Kia did not immediately drive
18 away, did it? The Kia remained idling along the side of Salem
19 Street where it had pulled over to drop off the passenger,
10:07 20 correct?

21 A. The Kia dropped the passenger off, and then the Kia left.

22 Q. Isn't it a fact, sir, that the Kia remained idling at the
23 curb and that you and Agent Cacace drove past the Kia at close
24 range so that you could look into the cab of the car?

25 A. Yes, we did drive past it.

1 Q. And the Kia was still parked along the side of the street.
2 He didn't immediately drive away after dropping off the
3 passenger, did he, sir?

4 A. He drove away.

5 Q. At some point he drove away, right?

6 A. By the time we flipped the run on Osgood Street, we ended
7 up behind the Kia again.

8 Q. He pulls over, lets the person off. The driver of the car
9 is texting or doing something on his cell phone. You're
10:08 10 following at some distance behind. You drive by so you could
11 get a closer look into the cab, correct?

12 A. Not necessarily to get a closer look into the cab but just
13 to observe where the passenger was getting out and getting in.

14 Q. You then drove past him, you went up to the next stop
15 sign, and you took a right onto Osgood?

16 A. We took a right and did a U-turn.

17 Q. Right. And did you -- what did you observe when you
18 looked in the car as you drove by?

19 A. We didn't -- my focus wasn't to look inside the vehicle
10:08 20 that we believed had conducted a drug transaction. We were
21 focused on the other parties, the other subject who had walked
22 to the other vehicle, who flipped -- who did a U-turn, who
23 conducted a U-turn on Salem Street.

24 Q. Isn't it a fact, sir, that the law enforcement agents lost
25 the person -- the guy got out of the car, and he was

1 immediately lost by law enforcement, correct?

2 A. Once the vehicle conducted a U-turn, my assumption,
3 because 495 is right there, yes, the agents had lost the
4 vehicle.

5 Q. Well, they lost the passenger; they lost the guy on foot.
6 They never -- can you show me any report that any of your
7 officers saw that passenger get back into the Buick?

8 A. Saw the passenger?

9 Q. Yeah.

10:09 10 A. I observed the passenger get inside of the vehicle, and
11 the vehicle did -- conducted a U-turn.

12 Q. Is that written in any report anywhere, sir?

13 A. No, I don't believe it is, but that was my observation.

14 Q. That's what you're telling us here today: That you saw
15 the guy get into the Buick, and you saw this Buick drive away?

16 A. That is my testimony.

17 Q. Did you run the plate on the Buick?

18 A. No, we did not.

19 Q. Why not?

10:10 20 A. Sometimes that stuff happens really fast. I wasn't able
21 to get a plate.

22 Q. There were five cars, by your admission, and a dozen
23 officers in this neighborhood, and you're telling me that not a
24 single one took down the plate?

25 THE COURT: No. He's telling us that he did not.

1 BY MR. KELLY:

2 Q. Well, you have radio transmission with all the other cars,
3 correct?

4 A. A broken radio system.

5 Q. Did anybody run the plate on this Buick?

6 MR. PANICH: This is asked and answered.

7 THE COURT: If he knows, he can tell us. If he
8 doesn't --

9 A. Nobody ran a plate.

10:10 10 BY MR. KELLY:

11 Q. Law enforcement lost the passenger and lost the Buick?

12 A. Correct.

13 Q. Persons that they believed were just involved in a drug
14 transaction, poof, vanished, correct?

15 A. Yes.

16 Q. And you said that you believed that a drug transaction had
17 taken place inside the vehicle. But isn't it a fact, sir, you
18 didn't observe any drug transaction take place, did you?

19 A. No.

20 10:11 Q. You are making a series of assumptions, correct?

21 A. No.

22 Q. So the Kia stays put, idling. You drive by. You take a
23 turn and do a U-turn of some -- at some point. And at that
24 point the Kia drives away, correct?

25 A. Correct.

1 Q. It doesn't drive away at a high rate of speed, correct?

2 A. No.

3 Q. Doesn't violate any laws, speed limit or otherwise?

4 A. No.

5 Q. The driver is wearing a seat belt?

6 A. I don't --

7 Q. There's no motor vehicle violation being perpetrated by
8 that Kia that would allow you to stop it; fair to say?

9 A. There was no motor vehicle infraction. It was stopped
10:11 based on the reasonable suspicion of a criminal enterprise
11 taken within the car.

12 Q. Now, when you drove away and drove by this car, you're in
13 an unmarked police vehicle, correct?

14 A. Correct.

15 Q. You and your partner are in plain clothes, right,
16 plainclothes?

17 A. Yes.

18 Q. You are not in uniforms?

19 A. Yes.

20 Q. You stare into the car of this person as you're passing
21 by, and then you pull up around the corner, correct?

22 A. You just keep on reiterating that we stared inside the
23 car. And nobody stared at the car, inside the vehicle. So
24 we --

25 Q. You drove by?

1 THE COURT: Hold it, please.

2 BY MR. KELLY:

3 Q. You drove by the car at a close distance and didn't bother
4 to look?

5 A. My observations were of the secondary party who had gained
6 access into the passenger's. We were trying to figure out
7 where he was going.

8 Q. Okay. So the Kia drives away. You actually, after you
9 turned -- took a right on Osgood Street, you did a U-turn, and
10:12 10 you went back towards the market; did you not?

11 A. Negative.

12 Q. Where did go?

13 A. We followed the Kia away.

14 Q. Well, isn't it the case, sir, that you first took a
15 U-turn, and you went back towards the market. The Kia took a
16 right-hand turn at one of the next stop signs. And then you
17 took another U-turn, and at a high rate of speed you came up
18 behind the Kia?

19 A. I don't recall that exactly.

10:13 20 Q. When you finally had to make contact to follow that Kia,
21 isn't it a fact, sir, that you had to drive your undercover
22 vehicle at a high rate of speed to catch up to the Kia because
23 it had gone a fair distance ahead of you?

24 A. There's no truth to the high rate of speed at all.

25 Q. Okay. And you pulled right up on the bumper of the Kia

1 with your vehicle?

2 A. Correct.

3 Q. At close proximity?

4 A. When we got to the area of Blanchard and Parker Street, I
5 can say that we were definitely close to the Kia --

6 Q. And --

7 A. -- which probably is what got his attention.

8 Q. And you claim that you were able to make certain
9 observations of suspicious movements inside the car; is that
10:14 10 your testimony?

11 A. Correct.

12 MR. KELLY: Your Honor, if I could approach. This is

13 D.

14 THE CLERK: Yes.

15 (Defendant Exhibit D received in evidence.)

16 BY MR. KELLY:

17 Q. Now, what color was that Kia, by the way?

18 A. I believe it was black.

19 Q. I am going to show you up on the screen here this
10:14 20 photograph, which is the same model Kia as indicated in the
21 various reports in this case.

22 THE COURT: This is not the car that was involved?

23 MR. KELLY: It's not the car, no. This is from the
24 company.

25 THE COURT: So this is a chalk?

1 MR. KELLY: A chalk.

2 BY MR. KELLY:

3 Q. Do you recognize that this is a Kia of the same model and
4 the type that you were following on that particular day, sir?

5 A. It's a very bad representation of the Kia.

6 Q. How is it a bad representation?

7 A. Because I'm looking at a 2D image. It's very, very
8 different when you're looking at something in a physical form.
9 And, also, if -- my assumption is, is that you're going to say
10:15 10 that I didn't see what was going on. But you have got to
11 remember that the road that we were traveling on, we were at an
12 incline. So I can very well see what's going on, at least with
13 the shoulders and the head, from the position that I was
14 driving at.

15 Q. The difference between the Kia that you were following and
16 this Kia was the color. That color was black. This one is
17 white, correct?

18 A. Yes.

19 Q. But this is an accurate image of what a Kia looks like
10:15 20 when you're directly behind it as if you were following it in a
21 car, correct?

22 A. I wouldn't be able to tell you unless I saw that vehicle
23 in comparison to this 2D image.

24 Q. And you can see in this Kia that it has an elevated trunk,
25 a fairly narrow back window, headrests, and a number of things

1 that make it somewhat difficult to see into the cab of this
2 car; fair to say?

3 A. It depends on what angle you're looking at it from.

4 Q. It would be very difficult, would it not, sir, traveling
5 behind this car to determine what, if anything, the driver of
6 the car in front of you is doing?

7 A. Based on the physical representation, no.

8 Q. You want us to believe that you were able to determine
9 that there were suspicious or furtive gestures going on and
10:16 10 that somebody was staring at you through the -- not only the
11 rearview mirror but the side mirrors which don't even appear on
12 this car from behind?

13 A. Yes.

14 Q. Now, at some point and -- let me get the map back up here.
15 Does this map that we've been looking at show where this bridge
16 is? Or is the bridge off this map, sir?

17 A. No, it doesn't show it.

18 Q. And this is a little -- kind of further back out, does
19 this map show where the bridge is?

10:17 20 A. No. I mean, it's not really clear enough for me to
21 answer.

22 Q. Let me do this.

23 MR. KELLY: If we could approach?

24 E.

25 (Defendant Exhibit E received in evidence.)

1 BY MR. KELLY:

2 Q. Sir, I'm showing you what's been marked as Defense Exhibit
3 E. You can see there it says "Salem Street," and in the
4 distance you can see a bridge. Is that the bridge we're
5 talking about?

6 A. Correct.

7 Q. So, first of all, let's talk about the bridge. That is a
8 bridge that has a metal trestle of some kind over the top of
9 it, correct?

10:19 10 A. Yes.

11 Q. Only one car can fit through going in either direction.
12 There's not room enough for two cars to be side by side; fair
13 to say?

14 A. Correct.

15 THE COURT: Which direction was the Kia and you
16 driving in this picture at the time?

17 THE WITNESS: Your Honor, we were going in the
18 opposite direction of where that vehicle is traveling.

19 THE COURT: So where it says "Salem Street," that was
10:19 20 the side of the street you were on?

21 THE WITNESS: Correct.

22 THE COURT: And so this end -- the bottom of the
23 picture is the place from which you turned right, onto the
24 bridge?

25 THE WITNESS: Correct, Your Honor. I activated my

1 lights when we were on Blanchard Street before we made this
2 turn.

3 THE COURT: Okay.

4 BY MR. KELLY:

5 Q. Are you aware of the fact that -- strike that.

6 How confident are you, sir, that you activated the
7 lights when you were on Blanchard Street just before you took
8 this turn, as opposed to after you had taken the turn onto
9 Salem Street?

10:20 10 A. 100 percent confident.

11 Q. And have you read Special Agent Cacace's report regarding
12 the stop?

13 A. I've reviewed it, yes.

14 Q. And are you aware that he indicates that it was roughly
15 ten seconds or so before -- after the lights were activated
16 that the car pulled over?

17 MR. PANICH: Objection.

18 THE COURT: Well, he said it. You know, I'll assume
19 he'll be on the stand and he'll tell us, but it doesn't --

10:20 20 BY MR. KELLY:

21 Q. How many seconds do you think it was, sir?

22 THE COURT: -- it doesn't affect the credibility of
23 this witness.

24 BY MR. KELLY:

25 Q. From the time you turn on the lights, how many seconds was

1 it before the car pulled over?

2 A. I would say double that.

3 Q. Isn't it true, sir, that a responsible driver, if driving
4 the car heading in this direction towards this bridge, and
5 suddenly police lights get activated behind that person, that
6 it wouldn't be wise for that person to stop either on the
7 bridge or just before the bridge because he would impede -- he
8 or she would impede traffic?

9 A. I would say, just based on this picture, a responsible
10:21 10 person would have immediately pulled over before they got to
11 the bridge.

12 Q. That's your view. But isn't, in fact, what happened here,
13 sir, that that car crossed over the metal bridge and then
14 immediately pulled to the right?

15 A. After the bridge.

16 Q. Right, immediately after the -- immediately after the
17 bridge it pulled to the right and stopped?

18 A. That's where he stopped, yes. Correct.

19 Q. And at no time did he violate any traffic -- commit any
10:21 20 traffic violations, to your knowledge? Correct?

21 A. No motor vehicle infractions, no.

22 Q. And you said that at that point you aggressively came
23 across the front of his car and blocked his car in, correct?

24 A. I never said "aggressively."

25 Q. Where did you park your car?

1 A. I parked it in front of him.

2 Q. Right. At an angle?

3 A. Negative.

4 Q. You pulled in front of him and stopped?

5 A. We were directly in line with each other.

6 Q. Okay. And then what happened, sir? Tell us what happened
7 next.

8 A. I approached the driver's side door.

9 Q. All right. And where was Special Agent Cacace?

10:22 10 A. On the passenger's side.

11 Q. So you got out of either door and came straight back on
12 either side of the vehicle?

13 A. Yes.

14 Q. The doors of the car were closed?

15 A. Correct.

16 Q. The doors of the car were locked?

17 A. Not that I know of.

18 Q. Isn't it a fact, sir, that as you approached the car you
19 were yelling, "Turn the car off"?

10:22 20 A. No.

21 Q. You deny that?

22 A. Yelling, no.

23 Q. Speaking in a loud voice?

24 A. Using my command presence, yes, maybe.

25 Q. You exit your car. You walk back towards the car, "Turn

1 the car off," all right. You're armed, carrying a gun in your
2 waistband?

3 A. You can't see my gun.

4 Q. Are you carrying a gun in your waistband or not?

5 A. I am, but it's concealed.

6 Q. Agent Cacace is carrying a gun, as well?

7 A. Correct.

8 Q. You are in plain clothes?

9 A. Correct.

10:23 10 Q. All right. And you come up to the car, and the windows
11 are closed, as well?

12 A. Yes.

13 Q. And what's the next thing you do? You bang on the window?

14 A. No.

15 Q. What's that? You read the Miranda rights?

16 A. We have a conversation at the door, so the door --

17 Q. Wait a minute. When you read the Miranda rights, did you
18 read the Miranda rights through the closed window?

19 A. No. The door is open.

10:23 20 Q. Isn't it a fact, sir, you approach the car. You yell,
21 "Turn the car off." And then you try to open the doors and the
22 doors are locked?

23 A. No, I don't remember that.

24 Q. Okay. You recall that the driver at that point put his
25 hands up and said, "Officers, what's this about?"

1 A. No.

2 Q. At the beginning of your interaction, isn't it a fair
3 statement, sir, that the driver pulls out his iPhone, says,
4 "Officer, I'm just reaching for my iPhone. I want to record
5 this for the benefit or the safety of both of us"?

6 A. This was after I confronted him with the facts.

7 Q. He turns on the iPhone?

8 A. Yes.

9 Q. And places it on the console, angling it so that it takes
10:24 10 an image of him?

11 A. At my request, yes.

12 Q. Does your demeanor and approach and volume change once you
13 know you're being video recorded from what it had been before?

14 A. No.

15 Q. You're sure about that?

16 A. I'm positive.

17 Q. And you claim you gave him Miranda warnings. My question
18 remains: Did you do that through a closed window and a locked
19 door in a car?

10:24 20 A. The door was open when I gave Miranda.

21 Q. Was he seated in the car?

22 A. Yes.

23 Q. Your memory is, and I thought you said that you weren't
24 entirely sure about this, you said, "I believe I had the door
25 open, but I'm not sure." You are not sure, are you?

1 A. The door was open, yes.

2 Q. Are you changing your testimony now, sir?

3 THE COURT: Hold it. Hold it.

4 BY MR. KELLY:

5 Q. You are changing your testimony?

6 A. No.

7 Q. You believe the door was open; but you're not 100 percent
8 sure, are you, sir?

9 MR. PANICH: Asked and answered, Your Honor.

10:25 10 MR. KELLY: I don't think it has been.

11 THE COURT: He can answer it once more. That's it.

12 BY MR. KELLY:

13 Q. Isn't it a fact that you are not 100 percent sure whether
14 the door was open or not?

15 A. The door was open.

16 Q. So you are changing your testimony?

17 MR. PANICH: Objection.

18 THE COURT: The objection is sustained.

19 BY MR. KELLY:

10:25 20 Q. So you're approaching this car with this occupant who, up
21 to this point, has been cooperative, right?

22 A. Yes.

23 Q. All right. And you claim that -- at that point you pull
24 out a card and start reading from a card; is that your
25 testimony?

1 A. Yes.

2 THE COURT: Mr. Gonzalez, what was the sequence of
3 events? He stopped. You stopped in front of him, as I
4 understand it?

5 THE WITNESS: Correct, Your Honor.

6 THE COURT: And the door was closed, and the window
7 was closed?

8 THE WITNESS: Yes.

9 THE COURT: And what happened then?

10:26 10 THE WITNESS: The interaction took place -- I opened
11 the door, or he opened the door. The door was open; I know
12 that with certainty.

13 THE COURT: The door was open when?

14 THE WITNESS: When we were engaging in conversation.
15 So I read my Miranda. I --

16 THE COURT: No. Before we get to the Miranda, you got
17 out of your car?

18 THE WITNESS: Correct.

19 THE COURT: He remained in his car?

10:26 20 THE WITNESS: Yes.

21 THE COURT: And then what happened? You walked back?

22 THE WITNESS: I walked right to the driver's side of
23 the vehicle.

24 THE COURT: And then what happened?

25 THE WITNESS: And then the door was opened.

1 THE COURT: By whom?

2 THE WITNESS: Honestly, Your Honor. I could have
3 opened it. He could have opened it. All I know is that the
4 door was opened when we engaged in conversation, and it was a
5 very civil conversation between both of us.

6 THE COURT: Okay.

7 BY MR. KELLY:

8 Q. You didn't know this person?

9 A. No.

10:27 10 Q. You didn't make any observations of any kind of a weapon?

11 A. No.

12 Q. He was being polite and civil to you?

13 A. Yes.

14 Q. And at some point the entirety of what was transpiring was
15 being recorded on an iPhone, correct?

16 A. Yes.

17 Q. And it's your testimony that you then directed him out, to
18 get out of the car?

19 A. Correct.

10:27 20 Q. And he complied?

21 A. Yes.

22 Q. And you immediately grabbed him by the waistband?

23 A. Yes.

24 Q. And so I would be correct, sir, at that point that he was
25 not free to leave? You were not going to let him walk away?

1 MR. PANICH: Objection. He's making a legal
2 conclusion.

3 MR. KELLY: No. No, I'm not.

4 THE COURT: He can tell us what his intention was at
5 the time.

6 BY MR. KELLY:

7 Q. You grabbed him by the waistband because you didn't want
8 him to run off. You didn't know this guy?

9 A. Yes.

10:28 10 Q. He was not free to leave?

11 A. No, he wasn't free to leave.

12 Q. Okay. You were with your partners who were both there and
13 armed and shortly thereafter joined by at least two other
14 officers who were also armed?

15 A. Correct.

16 Q. And at some point, still holding onto his pants, you
17 escorted him to the rear of the vehicle?

18 A. Correct.

19 Q. And you directed Special Agent Cacace to search the car?

10:28 20 A. I didn't direct him to search the car, no.

21 Q. He searched the car on his own?

22 A. You'd have to ask Agent Cacace.

23 Q. I will, but I'm asking you. Did he search the car on his
24 own?

25 A. No. Not while we were both standing there, no.

1 Q. Isn't it a fair statement, sir, that what transpired was
2 that Special Agent Cacace, while you were escorting Mr. Jimenez
3 to the back of the vehicle, jumped in and did a search of the
4 vehicle and found only two -- the two cell phones?

5 A. That's not factual, no.

6 Q. What's factual? Tell me what it is.

7 A. Well, while he was sitting there, he got out of the
8 vehicle. After he was moving towards his lap, when he got out,
9 I held onto his waistband while I escorted him to the back of
10:29 10 the vehicle. Based on the fact that we were investigating a
11 drug investigation, I saw the phone on the passenger's seat,
12 and then we conducted our business at the back until all the
13 other agents started to filter in.

14 Q. At some point, whether it was you or Agent Cacace, someone
15 took the two cell phones and brought them to the back of the
16 vehicle and placed them on the rear hood of the Kia, kind of
17 above where you see that title that says "Kia." They placed
18 the two cell phones on the rear hood, correct?

19 A. After we found the drugs?

10:29 20 Q. No. After you found the two cell phones in the car.

21 A. Negative. That's not my recollection.

22 Q. All right. So you would have left the cell phone in the
23 car? You didn't remove the cell phone or Agent Cacace didn't
24 remove it and bring it to the back of the car?

25 A. I don't know what Agent Cacace did. I was dealing with

1 the subject.

2 Q. Did you or Agent Cacace shut off the video that was
3 recording the event?

4 A. I don't know.

5 Q. So if the cell phone was placed on the back of the Kia and
6 removed from the car, it might have still picked up the audio
7 even if it didn't pick up the video?

8 A. Maybe, but I don't know if it was turned on or off.

9 Q. And, by the way, you say it's your standard practice --
10:30 10 when you approach a vehicle, the very, very first thing you do
11 is give the person the Miranda warnings; that's what you want
12 us to believe?

13 A. Based on a drug investigation, yes, that's how we operate.

14 Q. So you walk up and you tell the person, "Look, you don't
15 have to talk to me," right? "You have a right to a lawyer," et
16 cetera, et cetera, et cetera. "You don't have to talk to me."
17 That's what they teach you?

18 A. It's not taught. It's practice. We actually give them
19 the benefit of the doubt by informing them of their Miranda,
10:31 20 giving them the facts of why we stop them.

21 And then most of the times, a lot of them will take
22 it from there. And half of them tell us exactly what's going
23 on. And half of them, we have to do a little more digging.

24 Q. At the time that you are allegedly giving these Miranda
25 warnings when you walk up to the closed window, have you

1 already made a decision that you were going to arrest this
2 person right then and there, based on what you had?

3 A. It depends on what we observe beforehand.

4 Q. That's my question. Based on what you observed at that
5 moment when you're reading the Miranda warnings, had you
6 already made a decision that this person was going to be
7 arrested?

8 A. In this specific incident, no. We knew that we had
9 stopped them --

10:31 10 Q. So even though --

11 THE COURT: Hold it, Mr. Kelly.

12 BY MR. KELLY:

13 Q. So even at that moment --

14 THE COURT: Let him finish the answer first.

15 MR. KELLY: I thought he had.

16 THE COURT: No.

17 BY MR. KELLY:

18 Q. Did you want to say something else?

19 A. We knew we had stopped him because we had reason to
10:32 20 believe that a drug transaction had taken place inside of the
21 vehicle.

22 Q. So you believed but you didn't have evidence that would
23 have sustained an arrest or prosecution at that point?

24 A. Not at that point, no.

25 Q. So at the time you're allegedly giving these Miranda

1 warnings, you knew that you did not have a legitimate basis to
2 arrest this person?

3 MR. PANICH: Objection.

4 THE COURT: I don't know that he said that at all.

5 BY MR. KELLY:

6 Q. You didn't have a basis to arrest the person at the time
7 you gave him the Miranda warnings; isn't that what you just
8 told us?

9 MR. PANICH: Objection.

10:32 10 THE COURT: He can tell us again.

11 BY MR. KELLY:

12 Q. Go ahead.

13 A. We were conducting an investigation based on a 94C
14 violation.

15 Q. I understand what you were conducting. My question is a
16 simple one. At the moment you are reading the Miranda
17 warnings --

18 A. Yes.

19 Q. -- was it your intention to place this person in the car
10:32 20 under arrest?

21 A. The intent wasn't -- the intent was to determine if a drug
22 transaction had actually taken place before we decide whether
23 or not we have probable cause, yes.

24 Q. Follow my question.

25 THE COURT: I think he's answered it.

1 A. I can't answer yes or no to that because it depends on
2 where the investigation takes us.

3 BY MR. KELLY:

4 Q. At the moment that you gave the warnings, you did not have
5 enough --

6 THE COURT: I think he has answered that question.

7 MR. KELLY: Okay. I'll move on, Your Honor.

8 THE COURT: How much more do you have?

9 MR. KELLY: Just a couple minutes, Your Honor.

10:33 10 THE COURT: I should have asked earlier.

11 BY MR. KELLY:

12 Q. Now, up to that point, you had no reason to believe that
13 this person that you -- was being cooperative with you at the
14 side of the road was a danger to you? You had him by the
15 pants, right? You escorted him to the back, right? You had
16 not seen any kind of a weapon. There was no indication that
17 this person was armed or dangerous?

18 A. The indication for us was that there was a lot of movement
19 within inside the vehicle. So there was a potential threat
10:33 20 until we patted him down.

21 Q. So you had him by the thing -- by the pants. You patted
22 one side of his pants -- by the way, what kind of pants was he
23 wearing; do you remember?

24 A. They were skins. They were pretty tight.

25 Q. Isn't it a fair statement, sir, that he was wearing fairly

1 loose fitting, what we call cargo pants, green in color?

2 A. I just answered that they were tight pants. They are
3 skinny cargo pants.

4 Q. You're sure about that?

5 A. Yes.

6 Q. And photographs and other processing documents would back
7 you up on that, sir?

8 MR. PANICH: Objection.

9 THE COURT: The objection is sustained.

10:34 10 BY MR. KELLY:

11 Q. You felt something which you told us turned out to be lip
12 balm?

13 A. Yes.

14 Q. And at that point, you asked your partner to do a pat
15 frisk of the subject?

16 A. I didn't ask anybody to do a pat frisk.

17 Q. Did Special Agent Cacace conduct a pat frisk of the
18 subject?

19 A. He may have after that fact but not then and there.

10:35 20 Q. While you're standing there by the back of the car, isn't
21 it so, sir, that Special Agent Cacace patted him down, found
22 some quantity of money, and then otherwise said to you he's
23 clean? Isn't that what happened?

24 A. I don't recall that.

25 Q. You don't recall that?

1 A. No.

2 Q. And do you recall directing Special Agent Cacace to pat
3 him down a second time?

4 A. No.

5 Q. You had patted him down once to find this little lip balm
6 thing, and you didn't find any indication of a weapon, right?

7 A. I wasn't done with the pat frisk. I stopped at that,
8 addressed it, and then I moved on from there.

9 Q. At no time, whether it was in your first pat frisk or your
10:35 10 second pat frisk, did you feel anything that indicated to you
11 that it was a firearm, a gun?

12 A. No. Again, I addressed everything that -- I stopped at
13 everything that I needed to question.

14 Q. So you didn't feel a gun, correct?

15 A. Not yet, no.

16 Q. You didn't feel a knife?

17 A. No.

18 Q. During your two pat downs, you didn't feel anything which
19 indicated to you was a weapon?

10:36 20 A. All I felt was a lip balm and then the other object.

21 Q. Right. And the other object which you described, as you
22 were patting this person in his groin area, I think your
23 testimony was that you felt an object that was weird, that was
24 out of place, and that was an odd object. Is that what your
25 testimony was?

1 A. Yes.

2 Q. So not a gun, not a knife, but an odd object, correct?

3 A. Correct.

4 Q. So you decide rather than conduct a pat frisk, now you're
5 going to do an all-out search and reach into his underwear and
6 his groin area and find whatever this odd object is, correct?

7 A. After the statement, yes, we decided that we wanted to
8 search it.

9 Q. Your testimony is that -- and, of course, we all know why
10:36 10 the sequence is that you want us to believe --

11 MR. PANICH: Objection.

12 THE COURT: Can we just have a question, Mr. Kelly,
13 without embroidering?

14 BY MR. KELLY:

15 Q. You believed that what was in his underwear was drugs,
16 correct?

17 A. Correct.

18 Q. The odd object you did not believe was a weapon; you
19 believed it was some form of drugs?

10:37 20 A. Based on the investigation, yes, I believed it was drugs.

21 Q. And, in fact, it was not Officer Reardon, sir, but, in
22 fact, it was you who donned a protective glove of some kind and
23 reached into his pants to remove the object?

24 A. No.

25 Q. You deny that?

1 A. It was Detective Reardon who put on a blue glove.

2 Q. Well, before you said, "I believe it was Detective
3 Reardon." You're not sure?

4 A. It was Detective Reardon who put on --

5 Q. So you are changing your testimony again?

6 MR. PANICH: Objection.

7 THE COURT: I don't remember what he said before.

8 BY MR. KELLY:

9 Q. Well, he said, "I believe it was Special Agent Reardon"
10:38 10 who reached into the pants, but you're not sure?

11 A. I'm pretty positive that it was Detective Reardon who
12 pulled the item out from in between.

13 Q. And then you started to say, before you were cut off by
14 Counsel, that at that point you made the statement, "The jig's
15 up." Did you say something like that?

16 A. Yes.

17 Q. And --

18 A. It was something to that effect.

19 Q. So, in other words, you reached -- or somebody reaches
10:38 20 into the crotch area -- by the way, when they try to undo this
21 subject's pants, does he object?

22 A. No.

23 Q. What do you recall? He willingly allowed him to just
24 reach into his pants?

25 A. I would call it an admission of guilt. He was defeated

1 after I confronted him, and then he pulled the drugs out.

2 Q. Listen to my question.

3 Did someone ask permission to undo his pants and
4 reach into his underwear?

5 A. We informed him that we were going to recover the item,
6 yes.

7 Q. And how did he respond?

8 A. He just shook his head.

9 Q. Meaning what? Shook it up and down?

10:39 10 A. He shook it in defeat because he knew that we had
11 basically figured out what had occurred.

12 Q. Isn't it a fact, sir, that he resisted the notion that you
13 were going to reach into his underwear. And then,
14 notwithstanding either you or Reardon, reached into his
15 underwear and pulled something out. And at that point, you
16 said, "The jig's up"?

17 MR. PANICH: Objection.

18 BY MR. KELLY:

19 Q. Isn't that what happened, sir?

10:39 20 A. No.

21 THE COURT: He can tell us whether that's what
22 happened.

23 A. No, it did not.

24 BY MR. KELLY:

25 Q. In other words, at that point -- it was no longer a pat

1 frisk. When somebody reached into his underwear, that's a
2 full-blown search. You're not going after a gun. You're going
3 after an odd object or something that felt weird or out of
4 place?

5 MR. PANICH: Your Honor, I'm not sure what the
6 question is here, but the first part is a legal conclusion that
7 he was asking for.

8 THE COURT: Let's have a simple question.

9 BY MR. KELLY:

10:39 10 Q. At that point when someone is reaching into his underwear,
11 that's not a pat frisk, is it, sir?

12 MR. PANICH: Objection.

13 THE COURT: The objection is sustained. I'll have to
14 decide that.

15 BY MR. KELLY:

16 Q. The purpose of reaching into the underwear was to pull out
17 whatever you believed was a weird object, right?

18 A. Yes.

19 Q. And the weird object certainly was not a gun or a knife?

10:40 20 A. It was illegal contraband.

21 Q. It was drugs?

22 A. Yes, after the statement was made.

23 Q. It was a search for evidence, correct?

24 A. Yes.

25 MR. KELLY: Nothing further.

1 THE COURT: Any redirect?

2 MR. PANICH: Briefly, Your Honor.

3 THE COURT: Well, if there's any redirect, there's
4 going to be recross.

5 MR. PANICH: I'll try to avoid that on the scope, Your
6 Honor. Are the exhibits still --

7 MR. KELLY: No.

8 MR. PANICH: Keep your eye on those. I don't need
9 them now.

10:40 10 REDIRECT EXAMINATION

11 BY MR. PANICH:

12 Q. Have you ever felt drugs, Detective Gonzalez?

13 A. Yes.

14 Q. And how, if at all, was the weird object that you felt
15 consistent with what you previously felt was drugs?

16 A. It had a lot of similar properties from the -- just by
17 feeling it from the outside.

18 Q. Do you recall questions from Mr. Kelly regarding what he's
19 previously marked as D for identification?

10:41 20 A. Yes.

21 Q. Can you tell from this photograph or two-dimensional
22 image, as you put it, what the vantage point the
23 photographer -- they said it's an actual photograph -- is using
24 to capture the image of the Kia?

25 A. It looks like the angle of that shot is a lot lower than

1 one from, you know, from another angle would see it.

2 Q. What kind of car were you driving on the day of July 10 of
3 last year?

4 A. I was driving a Honda Accord.

5 Q. And what was the angle in which you were viewing the Kia
6 from behind?

7 A. I would say at points it was parallel but also above, just
8 based on some of the streets that we were on.

9 Q. Even in this photo, what do you notice right here where
10:42 10 I'm displaying right now?

11 A. The rearview mirror.

12 Q. Do you recall questions earlier about the passenger and
13 what he was wearing?

14 A. Yes.

15 Q. And you testified that he was wearing a flannel shirt?

16 A. Yes.

17 Q. In your experience investigating drug trafficking in
18 Lawrence -- well, first of all, I will ask a different
19 question.

10:42 20 Why is Lawrence the focus of drug activity?

21 MR. KELLY: Objection. I don't know how that's
22 relevant.

23 THE COURT: Why is Lawrence what?

24 MR. PANICH: A focus of drug activity. It gets to the
25 point of -- well, I don't want to --

1 MR. KELLY: Objection.

2 MR. PANICH: Let me see if I can lay a little more
3 foundation. You know what? I'm going to leave it.

4 I don't have anything further.

5 THE COURT: Any recross?

6 MR. KELLY: No, Your Honor. I'm all set.

7 THE COURT: Okay. Thank you, Mr. Gonzalez. You're
8 excused.

9 How many more witnesses do we have, and how much time
10:43 10 will they take?

11 MR. PANICH: So just one for the Government. That's
12 Special Agent Cacace.

13 MR. KELLY: And we have one that will be five minutes,
14 tops.

15 THE COURT: Okay. Why don't we take a brief recess,
16 and we'll finish before the witching hour, right?

17 MR. PANICH: I believe so, Your Honor.

18 THE COURT: Okay. So we'll take a recess.

19 (Recess taken from 10:44 to 11:02 a.m.)

11:02 20 (Witness sworn.)

21 THE WITNESS: I do.

22 THE CLERK: Sir, may I ask you to please speak into
23 the mic and state your name, spelling your last for the record,
24 please, sir.

25 THE WITNESS: My name is Gary S. Cacace, C-a-c-a-c-e.

1 THE CLERK: Thank you.

2 GARY S. CACACE, having been duly sworn by the Clerk,
3 was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. PANICH:

6 Q. Good morning, Supervisory Special Agent Cacace.

7 A. Good morning.

8 Q. What's your current position?

9 A. I'm currently a supervisory special agent with the Federal
11:03 10 Bureau of Investigation assigned to -- technically assigned to
11 headquarters in Washington, D.C., as the organized crime drug
12 enforcement task force coordinator, but I sit physically here
13 in New England in Boston. I'm responsible for the New England
14 area.

15 Q. How long --

16 THE COURT: So are you a coordinator? Or part of the
17 task force that is the subject of this case?

18 THE WITNESS: I am a coordinator.

19 THE COURT: But does that mean that you go out into
11:03 20 the field?

21 THE WITNESS: On occasion. I'm still responsible as a
22 special agent for enforcing the same laws that any other
23 special agent or federal task force officer would be
24 responsible for. I still have those duties.

25 THE COURT: Did you run this particular task force?

1 THE WITNESS: I was not in charge of this particular
2 task force, no.

3 THE COURT: Just a member of it?

4 THE WITNESS: Exactly. A temporary member on certain
5 days.

6 BY MR. PANICH:

7 Q. How long have you served in the FBI?

8 A. 28-and-a-half years.

9 Q. And during how much of that time, approximately, have you
11:04 10 served in a supervisory capacity?

11 A. Probably about nine years in total.

12 Q. What experience do you have in investigating narcotic
13 offenses?

14 A. As either an investigator or a supervisor, I probably have
15 about 11 years of that 28 years involved in narcotics
16 investigations, albeit some of them not full time. When I was
17 a supervisor, I had other responsibilities for other violations
18 within the FBI.

19 Q. What was Operation Devil's Highway?

11:04 20 A. Operation Devil's Highway was an OCDETF-funded strategic
21 initiative which was designed to target drug distribution
22 emanating from the vicinity of greater Lawrence, Massachusetts.
23 It started in the summer of -- late spring, early summer of
24 2019.

25 Q. Why was Lawrence a focus of the Bureau's attention?

1 A. For the last several years, the FBI, as well as our
2 federal and state and local counterpart law enforcement
3 agencies, were aware of drugs being purchased in Lawrence by
4 either end users or small- to mid-level drug dealers from
5 Massachusetts, New Hampshire, Maine, at least to name those
6 three states.

7 Q. Any particular reason why, in your opinion, Lawrence has
8 become a focus of drug activity?

9 MR. KELLY: Objection, Your Honor. I don't think this
11:05 10 is -- his opinion on -- I don't know how this --

11 THE COURT: As supervisor, he can tell us.

12 A. There are several reasons. Economic conditions
13 potentially. But one thing that seems to -- it's a city that
14 sits on -- between Route 93 and 495 with exits, and it makes it
15 fairly accessible from those places that I just described: The
16 seacoast, and Maine, New Hampshire, as well as northern New
17 Hampshire or central New Hampshire, and Massachusetts.

18 BY MR. PANICH:

19 Q. What role did you play in Operation Devil's Highway?

11:06 20 A. I was out as a member of one of the teams, of the various
21 teams that were sent out there. On any given day there were
22 seven to ten teams of maybe eight to ten law enforcement
23 officers. And so on the days that I was out, I would join a
24 particular team.

25 Q. So what was your assignment on -- or what were you doing

1 on July 10th of last year?

2 A. I was assigned with members of the Lowell resident
3 agency -- special agents with the Lowell resident agency as
4 well as task force officers from that office, FBI task force
5 officers, as well as detectives from North Andover, Lawrence.
6 And, specifically, I was riding with Detective Radames Gonzalez
7 from the Lawrence Police Department.

8 THE COURT: Does the Lowell resident agency take care
9 of Lawrence?

11:07 10 THE WITNESS: It does, yes.

11 BY MR. PANICH:

12 Q. I put on the screen what's been previously admitted as
13 Exhibit 1, and I'll direct your attention to Osgood Street here
14 and Portland Street here (indicating). What did you see in
15 that vicinity around 5:00 p.m. on the 10th?

16 A. Somewhere in the vicinity, I think it was actually closer
17 to Osgood and Market, we observed a dark-colored -- I thought
18 it was either brown or blue -- Buick automobile, older style
19 Buick automobile, occupied by two white males that was
11:07 20 traveling around the area, at least around that area.

21 Q. Who, if anyone, did you see exit the Buick?

22 A. Ultimately after a very short time --

23 THE COURT: Excuse me. Before you get to that, can
24 you tell us -- were you alone in the car or with somebody else?

25 THE WITNESS: No. I'm sorry. I was with Detective

1 Gonzalez. Detective Gonzalez was driving. I was the
2 passenger, and we had been out since probably around noontime
3 on --

4 THE COURT: And where on this map were you --

5 THE WITNESS: I don't think it's --

6 THE COURT: -- when you were driving around?

7 THE WITNESS: We were in this whole area. But when we
8 specifically saw the Buick, it was in the vicinity of Market
9 and Osgood. This area was an area that we had -- at various
11:08 10 times during the day were kind of patrolling, for lack of a
11 better word, because the Lawrence Police Department was aware
12 that this was an area that had been used for drug activity or
13 reported drug activity. On prior days, I think we were
14 actually there, as well, in that area, prior days of this
15 initiative.

16 THE COURT: Thank you.

17 BY MR. PANICH:

18 Q. So who, if anyone, did you see exit the Buick?

19 A. An unknown white male, who still remains unknown to this
11:09 20 day, exited the passenger's side of the Buick in the vicinity
21 of Market and Osgood, and then that person walked up Osgood
22 Street in the direction of Portland.

23 Q. And where did he go after that?

24 A. Ultimately, on foot, he went in -- there was a black Kia
25 automobile on Portland, I believe near the intersection of

1 Osgood -- and the unknown subject got into the passenger's side
2 of that vehicle.

3 Q. And then what did you do in response to that?

4 A. We observed -- put it out on the radio for the other units
5 that were out with us, like I said, maybe four or five other
6 cars. And we were -- I think we ended up on Portland Street,
7 and that vehicle traveled, the Kia -- we didn't have it under
8 observation. I didn't have it under my line of sight
9 completely the whole time, I don't think.

11:10 10 But we ended up seeing it again down in the vicinity
11 of Market and Loring Street. And it continued down Loring
12 Street towards, I guess in a southeasterly direction -- I don't
13 see a map -- I mean, in a southeasterly direction until it came
14 to the intersection of Salem Street.

15 Q. And what did you observe at that intersection?

16 A. It made a right on Salem Street, which I guess it would
17 make it pointed in a westerly direction, and the passenger of
18 that vehicle got out of the Kia, the unknown passenger.

19 Q. What, if anything, did you do to apprise the rest of your
11:11 20 team about the passenger that --

21 A. I put that out on the radio, as well as a -- we observed
22 the Buick, the original Buick that we teed off of, in the
23 vicinity of Loring and Salem Streets. I put that out to the
24 other officers and agents.

25 Q. What was your goal in doing that?

1 A. I wanted the -- we believed we were observing a drug
2 transaction, based on the short duration. I wanted other
3 officers to follow the Buick and ultimately stop that Buick and
4 discuss what had happened with the passenger and driver while
5 Detective Gonzalez and I focused on the Kia.

6 Q. Were other officers able to locate the Buick?

7 A. They were not.

8 Q. I want to skip ahead a little bit, to save time, to a
9 period when you stopped the Kia. Can you describe what
11:12 10 happened when you stopped the Kia?

11 A. Initially, the Kia did not stop. It was on Salem Street.
12 I believe it's Salem Street, near a bridge, what's known as the
13 Nyhan Bridge. I don't think it was on that map.

14 There was heavy traffic on the bridge. It appeared
15 that the driver of the Kia was looking around in his rearview
16 mirror. And before it got to Salem Street, it pulled over on a
17 street we were traveling, which I believe now would be
18 Blanchard Street. It pulled over slightly like it was going to
19 stop on Blanchard Street. We were behind it, kind of forced us
11:12 20 to stop a little bit, and then it pulled into traffic again and
21 continued on in its direction, ultimately turning right onto
22 Salem Street.

23 Both Detective Gonzalez and I believed that the
24 driver of the Kia was -- had made us, even though we were in a
25 Honda Accord, not traditionally a law enforcement -- known law

1 enforcement vehicle. We felt that he had probably seen us a
2 few times during this encounter and believed we were law
3 enforcement officers.

4 So as we turned onto Salem Street in the vicinity of
5 the Nyhan Bridge, Detective Gonzalez told me he was going to
6 stop the vehicle and activated the blue lights and the siren in
7 the Lawrence unmarked vehicle.

8 Q. So after you stopped the Kia, at some point did Officer --
9 excuse me, did Detective Gonzalez ask the driver to step out of
11:13 10 the vehicle?

11 A. He did.

12 Q. And, by the way, do you recognize the driver in court
13 today?

14 A. Yes. It's the gentleman sitting with the plaid jacket
15 between counsel.

16 MR. PANICH: And, once again, I'd ask the record to
17 reflect the witness identified the defendant.

18 THE COURT: Yes.

19 BY MR. PANICH:

11:14 20 Q. What were you doing as Detective Gonzalez -- well, back
21 up.

22 Who was the person who was primarily asking questions
23 of the defendant?

24 A. Detective Gonzalez. He was on the driver's side of the
25 vehicle.

1 Q. And what were you doing while he was asking the questions?

2 A. I was on the passenger's side of the vehicle, watching for
3 officer safety to make sure that we were -- that the driver
4 wasn't doing anything that made us concerned or would cause us
5 any harm.

6 Q. Why would you be concerned about officer safety in a
7 situation like this?

8 A. In drug transactions, it's been my experience that drug
9 dealers often carry firearms, often take firearms in trade for
11:14 10 drug activity for -- in exchange for drugs.

11 I was aware of a separate and completely independent
12 investigation that our gang task force was undertaking in
13 Lawrence at the time where they had bought between 50 and 70
14 guns by that point from known gang and drug traffickers. So
15 that was on the back of my mind.

16 Any time we're involved in drugs, we believe that
17 guns could be involved because they have been in the past.

18 Q. At some point did the defendant take out his iPhone?

19 A. He did.

11:15 20 Q. And what did he do with it?

21 A. He told Detective Gonzalez and me, I guess, that he wanted
22 to record this. I believe the words he said was, "I want to
23 record this for my safety." And he put the iPhone with his
24 right hand in the console area that would be the divider
25 between the seats in the Kia and put it up near where, like

1 maybe under the radio or heater system in the car.

2 Q. When the defendant ultimately exited the Kia, did he take
3 the phone with him?

4 A. I believe that that phone sat there the entire time that
5 we were in the stop.

6 Q. Once he was out of the car, what did you do?

7 A. Brought him to the back of the vehicle. I joined -- I
8 knew Officer Gonzalez was taking him out of the car. He
9 actually might have -- I can't recall whether he told me he was
11:16 10 taking him out or when he told Mr. Jimenez that he was taking
11 him out, I went to the driver's side of the Kia, and then we
12 brought Mr. Jimenez back to the trunk area of the Kia.

13 Q. And what did you do relative to Mr. Jimenez?

14 A. I searched his right side. I patted his right side down
15 and --

16 Q. Can you explain why you patted the right side?

17 A. Because Detective Gonzalez felt the need to take him out
18 of the car. In fact, when he took him out of the car, he may
19 have said words to the extent that he's reaching around. It
11:16 20 appeared that he was reaching -- to Gonzalez that he was
21 reaching with his left hand under his seat, and it turned
22 out --

23 Q. When -- sorry.

24 Was anyone patting him down on the left side?

25 A. Detective Gonzalez.

1 Q. So you were patting him down on the right side?

2 A. Yes.

3 Q. When you patted his pocket, what did you feel, if
4 anything?

5 A. I felt a bulge, which wasn't hard, that I believe to be
6 currency or potentially currency and narcotics.

7 THE COURT: Excuse me. Did both of you pat him down
8 at the same time?

9 THE WITNESS: I can't recall, Your Honor. It was
11:17 10 pretty close to being contemporaneous. I didn't pat him down
11 on the left side at all because I was standing to his right,
12 right rear, and Detective Gonzalez was kind of standing to his
13 left. So I didn't reach across his front to take his left
14 side, no. If it wasn't at the same time, if it wasn't
15 simultaneously, it was close -- in close duration to it.

16 THE COURT: Thank you.

17 BY MR. PANICH:

18 Q. After having felt what you said, I think, was consistent
19 with U.S. currency, what did you do?

11:18 20 A. I removed the currency and put it on the trunk of the car.

21 Q. What, if anything, did Detective Gonzalez say at that
22 point to the defendant?

23 A. He said, "What's this?"

24 Q. Do you remember exactly those being his exact words?

25 A. Something to the effect of, "What's this?" I can't recall

1 his exact words. He had found a ChapStick in his left pocket.

2 Q. Okay. Did he feel anything else?

3 A. He did, and I think that's why he had said, "What's this?"

4 Q. What was the response from the defendant?

5 A. Words to the effect of, "It is what it is."

6 Q. And at that point what happened?

7 A. Detective Gonzalez told me to pat him down again, which I
8 continued with the side that I did. I did not -- I do not
9 recall patting down Mr. Jimenez's crotch. I believe Detective
11:19 10 Gonzalez patted down his crotch because he felt something from
11 his side that I didn't feel from my side.

12 Q. What did you think Detective Gonzalez had felt when --
13 after the defendant had responded, "It is what it is"?

14 MR. KELLY: Objection, Your Honor. I don't know how
15 he can answer that.

16 THE COURT: I'm unclear about the sequence of events.
17 You patted down Mr. Jimenez on the right side?

18 THE WITNESS: Yes.

19 THE COURT: And you found money?

11:19 20 THE WITNESS: Yes.

21 THE COURT: Mr. Gonzalez patted him on the left side
22 and found what turned out to be a ChapStick?

23 THE WITNESS: Yes.

24 THE COURT: And when he found that ChapStick, what did
25 he say to you or to the defendant?

1 THE WITNESS: I don't know which happened first, Your
2 Honor. He said, "What is this?" to Mr. Jimenez, or he told me
3 to pat him down again. But he never communicated to me during
4 that exchange that he felt something hard in his crotch. It
5 was he said the words --

6 THE COURT: Let me go back for a moment. You said
7 that he asked Mr. Jimenez, "What is this?"

8 THE WITNESS: Yes. And that was after removing the
9 ChapStick from my --

11:20 10 THE COURT: Right. Before any further looking --
11 before any crotch?

12 THE WITNESS: Yes.

13 THE COURT: And what did the defendant say?

14 THE WITNESS: "It is what it is." Words to the effect
15 of, "It is what it is."

16 THE COURT: Okay.

17 BY MR. PANICH:

18 Q. After that statement and the pat frisk were complete, what
19 happened?

11:20 20 A. I believe Detective Gonzalez found the drugs in
21 Mr. Jimenez's crotch area.

22 Q. Do you remember who removed the item from the defendant?

23 A. Yeah. Detective Michael Reardon from North Andover Police
24 Department.

25 MR. PANICH: Your Honor, I don't have any further

1 questions.

2 THE COURT: Mr. Kelly?

3 MR. KELLY: Yes, Your Honor. If I could approach just
4 to give the witness a copy of Exhibit B, Your Honor, with the
5 Court's permission?

6 THE WITNESS: Thank you.

7 CROSS-EXAMINATION

8 BY MR. KELLY:

9 Q. Good morning, Special Agent Cacace.

11:21 10 Fair to say, sir, that you were the senior officer in
11 your two-person tandem that day on July 10th? You had far more
12 law enforcement experience than Detective Gonzalez?

13 A. That is -- I had far more FBI experience. As far as drug
14 interdiction on the side of a Lawrence policeman and detective,
15 I'm not sure. I'm not sure. He appeared as a very experienced
16 officer, as well, based on --

17 Q. Did you know at that time how long he had been a
18 detective?

19 A. I don't know if I knew then, or I don't know that I know
11:22 20 now.

21 Q. Had you and he worked together previously prior to this
22 date on July 10th?

23 A. I think we might have worked together one prior time. I
24 just can't recall whether that was before or after this day.

25 Q. So on July 10th, you told us that you were out at about

1 noontime patrolling for the afternoon?

2 A. Yes.

3 Q. Prior to 5:00?

4 A. Yes.

5 Q. Looking for suspicious activity?

6 A. Specifically, suspicious narcotics activity, yes.

7 Q. And I've placed before you a document which is three pages
8 long. Do you recognize that, Special Agent Cacace?

9 A. I do.

11:22 10 Q. And that is your FBI-302. That's the report that you
11 wrote in connection with the events of July 10th?

12 A. Yes.

13 Q. And am I fair -- am I accurate, sir, if you were just to
14 focus on the first paragraph there --

15 THE COURT: This is not yet in evidence?

16 MR. PANICH: Correct, Your Honor.

17 MR. KELLY: I would offer it, Your Honor.

18 MR. PANICH: For what purpose?

19 THE COURT: Well, among other things, recorded
11:23 20 recollection.

21 MR. PANICH: I think that only applies if he asserts a
22 failure of memory, if I'm not mistaken. There hasn't been any
23 inconsistency that's been identified or any statement that he's
24 trying to challenge.

25 THE COURT: But that's where he's going.

1 MR. KELLY: Yes, Your Honor.

2 MR. PANICH: I'd ask that he establish some foundation
3 about that, what he's trying to establish.

4 THE COURT: It's his document. He wrote it.

5 MR. PANICH: Well, but it's still -- it's still not
6 prior testimony, so it's still hearsay. It can be offered for
7 inconsistency purposes, but I don't think --

8 THE COURT: At the moment, I think he's offering it to
9 both refresh recollection and to test his testimony.

11:23 10 MR. PANICH: But he hasn't asserted a failure of
11 memory yet. I just don't know that a foundation has been
12 asserted for that. I don't have a problem of him using it for
13 those purposes, but I just ask if he is to lay a foundation.

14 THE COURT: Okay.

15 BY MR. KELLY:

16 Q. You wrote this perhaps with some assistance from Agent
17 Weidlich?

18 A. Yes.

19 Q. And when you wrote this report, you tried to be accurate?

11:24 20 A. Yes.

21 Q. And fair to say that the date you wrote this back in
22 September, your memory of the events of July 10th were better
23 than they are today?

24 A. Yes.

25 Q. Am I correct, sir, if I were just focusing on the first

1 paragraph, there are 13 different police officers who are
2 listed there who participated in some manner in the events of
3 July 10th?

4 MR. PANICH: Again, Your Honor, this is not
5 inconsistent with anything that was said previously.

6 THE COURT: He will tell us first how many there were
7 and if he doesn't know. I mean, do you really want him to jump
8 through the hoops?

9 BY MR. KELLY:

11:24 10 Q. Am I correct that there were approximately 13 officers
11 that are listed in your report that were participating that
12 particular day?

13 A. Yes.

14 Q. And I think, as you've already told us, sir, that there
15 were four or five vehicles that were involved with these
16 officers?

17 A. I think that's probably about right.

18 Q. So the first thing that happened, sir, is that at or
19 around 5:00, you observed this dark-colored Buick sedan?

11:25 20 A. Correct.

21 Q. And so that particular day, as you were patrolling, you
22 hadn't yet seen this Kia that was parked up on Portland Street.
23 It was the Buick sedan that caught your attention initially?

24 A. It did, yes.

25 Q. Okay. And you were the passenger, as you told us, and

1 Detective Gonzalez was the driver, correct?

2 A. That's correct.

3 Q. And did you then -- did you drive your car, your
4 undercover car, up Osgood Street when you saw that Buick parked
5 there?

6 A. I believe we did, yes.

7 Q. And you saw the passenger of the Buick get out and walk up
8 the street?

9 A. Yes.

11:25 10 Q. And tell me what you did at that point. As you are seeing
11 the guy get out of the car walking towards Portland Street,
12 where are you in your vehicle?

13 A. I'm still in the passenger's seat, but I believe the
14 vehicle with both of us traveled on Osgood Street and then took
15 the right onto Portland Street.

16 Q. Well, so as you drove up Osgood Street, did you pass the
17 passenger who was walking up the street?

18 A. I can't recall whether we waited a little while to let him
19 go on foot because we would be -- there was nothing on Osgood
11:26 20 Street where he got out. There was -- you know, he was walking
21 up the street. We might not have followed him right away, but
22 ultimately we did come up Osgood and make the turn onto
23 Portland.

24 Q. Okay. And so when you're making observations of the
25 person walking up the street, are you seeing him from behind?

1 A. Yes.

2 Q. So at no time did you observe this person walking up the
3 street carrying a handful of money?

4 A. I did not notice any money in his hand.

5 Q. Did you actually see him get into the Kia on Portland
6 Street?

7 A. I can't recall whether I saw it or whether I learned it
8 later.

9 Q. So going back just for a minute to the Buick sedan, did
11:27 10 you or any of your fellow officers run the plate on that
11 dark-colored Buick?

12 A. I did not.

13 Q. Okay. Did anybody else, to your knowledge?

14 A. I don't recall any -- I don't recall if anyone else did.

15 Q. Okay. And, to your knowledge, to this day, that -- no one
16 has done any further investigation relative to that
17 dark-colored Buick sedan?

18 A. I don't believe so, but I'm not the case agent. I'm not
19 familiar with what's happened since then.

11:27 20 Q. Let me ask you two quick, specific questions: Is that
21 dark-colored Buick sedan a government vehicle?

22 A. It is not.

23 Q. Was the passenger who was walking up the street a
24 Government informant?

25 A. Not that I know of. Not somebody that was out with us

1 that day, no.

2 Q. Okay. So the guy gets into the Kia. You turn the corner
3 at Portland Street. You drive past the Kia up the road?

4 A. I believe so, yes.

5 Q. And do you then take a U-turn at some point?

6 A. I think we turned right, and the Kia -- like I said, I'm
7 not -- I can't remember whether we were behind the Kia the
8 whole time or if it made a right -- there was a couple of
9 rights that feed down, or if the Kia itself had turned around
11:28 10 and gone down Osgood Street. As we sit here right now, I can't
11 recall.

12 Q. But, in any event, at some point you turned around and
13 attempted to follow the Kia?

14 A. Yeah. I think we met the Kia again on Market. I wish I
15 had that map. But, yeah, I think it's on Market, based on my
16 recollection.

17 MR. KELLY: Do we have the map?

18 THE WITNESS: I think we lost sight of the Kia for a
19 bit, but I might have that wrong.

11:28 20 MR. KELLY: Could I have Exhibit 1?

21 BY MR. KELLY:

22 Q. I don't know if that helps you at all, Special Agent
23 Cacace.

24 A. Yeah. I don't remember following the Kia down Osgood
25 Street. I recall these -- it's kind of tough to see. It's

1 faded on these maps, but there's a couple streets, like Temple.
2 My recollection is going down Temple Street and then coming
3 back to Market. And as I sit here, I can't recall whether the
4 Kia is in front of us at that point or we met it again at
5 Market Street.

6 Q. Okay. Now -- I'm sorry. Had you finished?

7 A. Yeah. Like I said -- what I was going to say is I can't
8 remember if the Kia passed us on Portland heading in an
9 easterly direction, or if it turned around and we just met
11:29 10 again on Market, as I sit here today.

11 Q. Now, at some point, somebody, whether you and your
12 partners or one of the other cars, ran the license plate on the
13 Kia?

14 A. Yes.

15 Q. And it came back to this company called Eshan?

16 A. Yes.

17 Q. And you wrote in your report that Detective Gonzalez was
18 aware that this company lent its cars to people involved in the
19 drug business?

11:29 20 A. Yes. The radio -- Detective Gonzalez ran that tag -- my
21 recollection is that he ran it over the Lawrence dispatch, and
22 when it came back -- it was either over the air or he called
23 the dispatch on his cell phone, I don't recall which. But I
24 remember hearing a female operator's voice saying it's that
25 same company and that -- you know, that they've been observing.

1 Q. From July 10th to the present, has the task force or the
2 FBI done any further investigation with respect to Eshan
3 company?

4 A. I don't know the answer to that.

5 Q. Do you know that, in fact, that that is a legitimate
6 rental car agency that rents cars to all kinds of people?

7 A. Actually, I take that back. I do know that. You were
8 correct in that it is a rental company, yes.

9 Q. It's a local rental car company?

11:30 10 A. Yes.

11 Q. Now, you said that it's -- you can't recall that you
12 followed the car precisely, but at some point you know that the
13 car stopped somewhere in the vicinity of Loring Street and
14 Salem Street?

15 A. Yes, actually on Salem Street. It turned -- we were
16 behind the car on Loring, and then it turned onto Salem heading
17 initially in the southeastern direction and then turning right
18 onto Salem Street and pulling over at Salem.

19 Q. Okay.

11:31 20 THE COURT: At that point, the Kia had two people in
21 it?

22 THE WITNESS: Yes.

23 MR. KELLY: Now, I want to offer one additional
24 photograph that we haven't yet put into evidence. I believe
25 it's Exhibit F, if I'm not mistaken, Lisa.

1 THE CLERK: I believe it is, yes.

2 (Defendant Exhibit F received in evidence.)

3 BY MR. KELLY:

4 Q. And up on the screen, Special Agent, do you recognize
5 what's depicted there?

6 A. I recognize the convenience store that sits at the corner
7 of Loring and Salem.

8 Q. So that's what's known as Hernandez Market?

9 A. It appears that way. It's a little vague in the picture,
11:32 10 but I think so.

11 Q. And if I was looking at this document, it's actually noted
12 on the thing -- there's a little blue mark there, and it says
13 Hernandez Market; do you see that?

14 A. Yes.

15 Q. That's right at kind of the southern side of Salem Street?

16 A. Yes.

17 Q. And is it fair to say, sir, that that's directly across
18 the crosswalk on Salem Street from where the Kia pulled over
19 and stopped?

11:32 20 A. Yes. If I'm looking at this right, and I assume I am,
21 where that backwards stop sign is, that that is Salem Street,
22 and that the -- where the "No Parking" sign is is Loring
23 Street. I think it's --

24 Q. I think we have a better image. I am going to show you
25 Government Exhibit Number 4, which shows a little bit of a

1 different perspective, and I believe this is Loring Street --

2 A. Yes.

3 Q. -- and this is Salem Street?

4 A. Yes.

5 Q. So you would have come down Loring, and the Kia would have
6 stopped somewhere kind of just about where this white car is,
7 and this is Hernandez Market down here (indicating)?

8 A. I think the Kia stopped -- not the white car that's in the
9 crosswalk. I think the Kia stopped -- if I could point,
11:33 10 there's a black vehicle and then a lighter-color vehicle just
11 past that. My recollection is the Kia pulled over somewhere.

12 Q. Somewhere there?

13 A. Somewhere there.

14 Q. Made the corner, went up a couple of car lengths, and
15 pulled over?

16 A. Yes.

17 Q. And what did you then do, you and your partner?

18 A. I put out on the radio that we observed the Buick and that
19 the passenger of the Kia was out.

11:33 20 Q. And fair to say that for whatever reason, law enforcement
21 lost both the passenger and the Buick?

22 A. Yes.

23 Q. They vanished?

24 A. Yes.

25 Q. And you -- at some point, then, you and your partner,

1 drove your undercover vehicle past the Kia, which was idling or
2 parked along the area that you just described for us?

3 A. Yes.

4 Q. And you rolled down your window, and you tried to observe
5 what, if anything, was going on within the passenger's
6 compartment of that car?

7 A. I don't recall rolling down my window or if it was already
8 down, but it might have been.

9 Q. Okay. And you were dressed in plain clothes?

11:34 10 A. I had a vest emblazoned with "FBI," but I had a shirt over
11 it because we were doing surveillance before.

12 Q. Okay. So after the Kia dropped off the passenger, it
13 didn't immediately drive away. It stayed for a few moments?

14 A. It did. I think we passed it and pulled over, and we
15 might have U-turned. We U-turned twice. I just can't recall
16 that for sure, but ultimately we ended up behind the Kia again.

17 Q. Maybe this will help with your memory, sir. Isn't it a
18 fact that what you did was you drove past the Kia, you took a
19 right on Osgood, stopped for a second. At that point the Kia
11:35 20 pulled away down Salem Street. You did a U-turn and drove back
21 towards Hernandez Market initially, and then a second U-turn to
22 go in the direction of the Kia?

23 A. That's actually how I remember -- yes, that's how I
24 felt --

25 Q. And by the time you made these two moves, the Kia had

1 actually opened up some space, some distance between you and
2 the car that you were in, correct?

3 A. Yeah. There was a fair amount of traffic around at that
4 time.

5 Q. And so you had to kind of accelerate a little bit in order
6 to kind of catch up and not risk losing the Kia?

7 A. Correct.

8 Q. All right. And so at some point you caught up to the car,
9 and you were fairly close behind the back of the Kia; were you
11:36 10 not? Were you able to actually, you say, see somebody look in
11 the rearview mirror?

12 A. I believe -- yes, and that was on Parker and Blanchard
13 Streets. I think there were a couple of cars in between us
14 traveling on Salem, westerly on Salem, and the Kia made a right
15 on what I believe is Parker Street. Once we made the right on
16 Parker Street, I believe we were number one behind the Kia.

17 And when it went left onto, I believe, Blanchard
18 Street, if I'm remembering the streets right, we were
19 ultimately -- we were behind the Kia on what I'm calling
11:36 20 Blanchard Street before it made the final turn onto Salem and
21 the stop at the Nyhan Bridge.

22 Q. So now I'm showing you what's been marked as Exhibit E.
23 Do you recognize what's depicted there, Special Agent?

24 A. Yes. That's Salem Street, and the Nyhan Bridge is --

25 Q. Up ahead there?

1 A. Up ahead, yes.

2 Q. And so your vehicle and the Kia were actually traveling in
3 this direction towards the bridge as depicted in this
4 photograph?

5 A. No. If I'm looking at this right, the Kia would be coming
6 at the photographer and as well as us, if I have this -- if
7 this is oriented properly.

8 Q. I'm not sure that's the case.

9 MR. PANICH: Objection.

11:37 10 THE COURT: Well, that's the testimony.

11 BY MR. KELLY:

12 Q. All right. Isn't it a fact, sir, that the lights in the
13 undercover vehicle were not activated by Officer Hernandez
14 until he -- you and the Kia turned onto Salem Street?

15 MR. PANICH: Objection. Who's Officer Hernandez?

16 MR. KELLY: Sorry.

17 Q. Gonzalez, I apologize.

18 A. Yeah, I believe Officer Gonzalez activated the lights, on
19 Salem Street.

11:37 20 Q. So, in other words, he didn't activate the lights while on
21 Blanchard Street?

22 A. No, he did not activate them on Blanchard Street, to my
23 recollection.

24 Q. So he flips on the lights after he's already turned onto
25 Salem Street, which is -- there's a bridge ahead of you,

1 correct?

2 A. Yeah.

3 Q. And how many seconds would you estimate it took the Kia to
4 stop after the lights were activated?

5 A. 10 to 20 seconds. I don't think it was much longer than
6 that.

7 Q. It could have been 10 seconds?

8 A. Yeah. There was traffic, but it didn't appear that the
9 Kia was stopping. We were on the bridge, so it was a little
11:38 10 bit there before it stopped. But it wasn't forever, no.

11 Q. This particular bridge only is wide enough for a single
12 car to travel in each direction?

13 A. Yes.

14 Q. The driver of the Kia cleared the bridge, rather than pull
15 over on the bridge or just before the bridge; but as soon as he
16 cleared the bridge, he immediately pulled to the right and
17 stopped?

18 A. Yes.

19 Q. Okay. And all the time that you were following him, he
11:38 20 broke no traffic laws, to your knowledge?

21 A. I'm not a traffic officer, but I don't believe he did.

22 Q. He wasn't speeding?

23 A. No.

24 Q. Didn't have a broken taillight?

25 A. No.

1 Q. Okay. So you then pulled in front of his car. How did
2 you position your car as to his once his car had stopped?

3 A. Detective Gonzalez said, "I'm going to pull around in
4 front of him." And he -- he pulled so that the nose of the
5 unmarked was facing the bridge, the brick wall next to the
6 bridge, but in a way that the driver of the Kia couldn't easily
7 maneuver around us.

8 Q. So it was kind of on an angle?

9 A. It was on an angle, yes. Thank you.

11:39 10 Q. He didn't clear him and pull to the right, you know, some
11 like parallel parking?

12 A. No. He pulled at an angle.

13 Q. And then the two of you exited the vehicle and walked back
14 towards the Kia?

15 A. Yes.

16 Q. You on the passenger's side; he on the driver's side?

17 A. Yes.

18 Q. And am I correct, sir, that when you got to the Kia, the
19 doors of the vehicle were locked?

11:40 20 A. I can't recall whether they were locked, but they were
21 closed, yes.

22 Q. The windows of the car were closed?

23 A. I believe so.

24 Q. Okay. Did -- you said that Detective Gonzalez was doing
25 most of the communicating?

1 A. Yes.

2 Q. Did he yell or speak in a loud voice, "Turn off your
3 engine"?

4 A. He might have. The engine was still running. I believe
5 he might have said to me that the car was in park -- I mean, in
6 drive.

7 Q. Now, your report -- and I'm looking at Page 2. You can go
8 to Page 2 of your report, that paragraph at the bottom. It
9 says, "Kia's engine was on, and the transmission remained in
11:40 10 drive." My question to you, sir, is: That's not something
11 that you observed. That's something that Detective Gonzalez
12 observed?

13 A. That's my recollection.

14 Q. And how would it have been possible for him approaching
15 the car from the front to know that the transmission was still
16 in drive?

17 A. I think it was when he got to it, when he got to the
18 vehicle.

19 Q. Oh. That's what your recollection is?

11:41 20 A. Yes.

21 Q. Okay. So once he got to the vehicle, did -- what's the
22 first thing that happened?

23 A. He approached the driver and told him that we were
24 investigating narcotics activity.

25 Q. Did he do that through the window?

1 A. I don't recall whether the window was down or not.

2 Q. Do you recall, sir, that the driver of the vehicle put his
3 hands like this (demonstrating) and said, "What's this all
4 about?"

5 A. I don't recall, but -- I don't recall him making any moves
6 with his hands while we were approaching the vehicle. It is
7 quite possible that he put his hands up and asked what was
8 going on.

9 Q. And is it your recollection, sir, that after he did that
11:42 10 is when he reached for this iPhone and said to the
11 officer -- to Detective Gonzalez, who was on his side, "I want
12 to turn on my phone and record this for either my safety or
13 both of our safeties"?

14 A. He ultimately did but not immediately.

15 Q. Okay. When's your recollection as to when he turned on
16 the iPhone?

17 A. Into a short duration to the stop because there wasn't a
18 ton of time or discussion, but I recall it being after
19 Detective Gonzalez Mirandized him and told him that we had
11:42 20 observed him with somebody in that car.

21 Q. Now, you've been doing drug cases, I think, for 11 years
22 or so?

23 A. Yep.

24 Q. Has it been your practice or experience that an officer
25 approaching a vehicle like this would just immediately, first

1 thing, read somebody his Miranda rights?

2 MR. PANICH: Objection.

3 THE COURT: What's the objection?

4 MR. PANICH: Relevance of what his experience is as to
5 whether what actually happened.

6 THE COURT: I mean, the Miranda rights and the
7 immediacy --

8 MR. PANICH: I agree.

9 THE COURT: -- of the Miranda rights came out in the
11:43 10 government's first witness.

11 MR. PANICH: I agree. The question was: Was this
12 consistent with previous experiences you had and not about what
13 actually happened.

14 THE COURT: He's asking whether it's usual to do it
15 that way, I think.

16 MR. PANICH: Agreed. I would challenge the relevance.
17 That's all.

18 THE COURT: Okay. Your objection is noted.

19 BY MR. KELLY:

11:43 20 Q. Do you understand the question?

21 A. Could you repeat the question, please?

22 Q. Based on your, you know, practice and past experience, is
23 it your -- has it been your experience that the first thing an
24 officer would do in approaching a car which had just been
25 stopped is read somebody his Miranda rights?

1 A. Not that often, no.

2 Q. And, in fact, is it your recollection, sir, that at the
3 time these rights were allegedly read, that the doors were
4 closed?

5 A. The passenger's door was open because I opened it.

6 Q. Okay. At some point did you learn that the passenger's
7 door was locked? Did you try to open it and determine that it
8 was locked?

9 A. It's possible. I don't recall now. I might have told
11:44 10 Mr. Jimenez --

11 Q. But at some point you opened the door?

12 A. Yes.

13 Q. Do you recall if the door was opened at the time that
14 Detective Gonzalez provided these Miranda rights, allegedly?

15 A. Yes.

16 Q. And how did he provide the Miranda rights?

17 A. He -- initially, he told Mr. Jimenez that we were
18 investigating narcotics activity and that he -- we asked -- he
19 asked who was in the vehicle. Mr. Jimenez denied anyone was in
11:44 20 the vehicle, and then my recollection is Detective Gonzalez
21 read him the Miranda rights.

22 Q. Read him?

23 A. Advised him of the Miranda rights.

24 Q. Was he reading from something?

25 A. I didn't pay attention to whether he was reading it or

1 whether he was looking at them.

2 Q. So your recollection is that the sequence of events is
3 that he walks up, tells him he's doing a drug investigation,
4 effectively, and asked him a question?

5 A. Yes.

6 Q. Prior to allegedly reading these Miranda rights?

7 A. Yes.

8 Q. Does he do that through the closed window and the closed
9 driver's door?

11:45 10 A. I believe that either the window was down or -- and the
11 door was shut; that's my recollection. I don't remember him
12 opening the driver's door. But -- or Mr. Jimenez opening the
13 driver's door. I just don't recall.

14 Q. How sure are you as to whether the window was closed or
15 opened?

16 A. I'm not positive.

17 Q. Now, you said that the cell phone -- the iPhone was placed
18 in the console area and recording this transaction during the
19 entire period of the stop, at least until the phones were
11:46 20 removed from the car?

21 A. No. I thought that Mr. Jimenez asked to record it
22 subsequent to Detective Gonzalez advising him of his Miranda
23 rights, as well as -- and then Mr. Jimenez said -- then
24 acknowledged that he did have somebody in the car and then that
25 he wanted to record the transaction.

1 Q. How sure are you, Agent, of the sequencing of these
2 events?

3 A. I'm not positive --

4 Q. Okay.

5 A. -- but that's my recollection.

6 Q. Now, at some point you found a second cell phone. Am I
7 correct, sir, that both of those two cell phones were removed
8 from the passenger's compartment and were placed in the trunk
9 area of the Kia?

11:46 10 A. I don't remember the iPhone being removed from the Kia
11 while we were at the back of the vehicle. I remember the other
12 phone, which I did not remove, but it -- ultimately, through
13 conversation or what have you, Detective Gonzalez, while
14 Mr. Jimenez was placing the iPhone that he was moving with his
15 left hand, and -- somewhere between the seat or the crotch, and
16 that was what made Mister -- made Detective Gonzalez take him
17 out of the vehicle. It was the movement that I didn't see.

18 Q. At any point, sir, Special Agent, did you shut off the
19 iPhone?

11:47 20 A. I did not, no.

21 Q. Do you know -- did you observe Detective Gonzalez shut off
22 the iPhone?

23 A. I did not.

24 Q. Just one quick question before I move to what you just
25 told us. The Kia that you observed that particular day was

1 black in color; was it not?

2 A. I believe so -- no, I know it was. Yes.

3 Q. But it was a Kia Forte, identical to this model which is
4 shown here on Exhibit D?

5 A. Yes.

6 Q. And as you were driving up from the back, roughly this is
7 what the back of the Kia looks like?

8 A. Yes.

9 Q. Now, you said that at that point Detective Gonzalez asked
11:48 10 the driver to step out of the car?

11 A. Yes.

12 Q. Did he do it in a polite voice or did he direct him to get
13 out of the car?

14 A. I think he told him that, "I'm going to take you out of
15 the car" or --

16 Q. Okay. And he pulled him out of the car. And at the time
17 he did that, he held onto his waistband; did he not?

18 A. Yes.

19 Q. And -- because he didn't want the guy to run away?

11:48 20 A. No, he did not.

21 Q. But the passenger -- excuse me. The driver complied with
22 his request and voluntarily exited the car?

23 A. Yes.

24 Q. He wasn't belligerent; didn't offer any resistance?

25 A. No, he did not.

1 Q. Up to that point you hadn't made any observations of any
2 weapons in the car?

3 A. I had not, no.

4 Q. You didn't know this driver. You hadn't encountered him
5 previously?

6 A. No.

7 Q. He hadn't committed any traffic violations of any kind?

8 A. Again, I don't know every traffic law, but I don't believe
9 that he had -- I don't believe that we pulled him over for a
11:49 10 traffic violation.

11 Q. And you were asked a number of questions, including by
12 Judge Zobel, about the pat frisk that went on.

13 A. Yes.

14 Q. So am I correct, sir, that the two of you are both kind of
15 pat frisking him, one on one side, one on the other, whether at
16 the same time or in sequence, around that time?

17 A. Yes.

18 Q. And then you found the currency?

19 A. Correct.

11:49 20 Q. And Detective Gonzalez found the ChapStick?

21 A. Correct.

22 Q. And at some point in time did you say to Detective
23 Gonzalez, based on what you had frisked, he was clean?

24 A. On my side, yes.

25 Q. Okay. Did Detective Gonzalez then direct you to pat frisk

1 him again?

2 A. Yes.

3 Q. And did you do so?

4 A. I did.

5 Q. And after you completed that, what did you say to
6 Detective Gonzalez?

7 A. I said I didn't find anything or he was clean or --

8 Q. Okay. So you found no hard objects that you understood to
9 be either a gun or a knife?

11:50 10 A. Correct.

11 Q. Or a weapon of any kind?

12 A. Correct.

13 Q. And Detective Gonzalez told you that he had encountered
14 something in the crotch area of the driver?

15 A. Yes.

16 Q. And did he describe it?

17 A. I think he said he had something in there, or there's
18 something down there.

19 Q. Okay. Did he say if it was a hard object?

11:50 20 A. I think he said it was something hard, but I don't
21 remember his exact words. It was either, "There's something
22 hard in there," or, "There's something down there."

23 Q. Okay.

24 A. Which I did not pat Mr. Jimenez's crotch area.

25 Q. Okay. Do you recall, by the way, what kind of pants

1 Mr. Jimenez was wearing on that particular day?

2 A. I don't.

3 Q. Do you know whether or not -- does it refresh your
4 recollection that he was wearing what we call cargo pants,
5 which are kind of loose fitting, kind of green in color, pants?

6 A. I don't have a recollection. I remember the dark pants.

7 Q. Okay.

8 A. If that's what you're telling me he's wearing, I don't
9 have anything to say that they weren't.

11:51 10 Q. Fair to say, Special Agent, you didn't make any
11 observations of any unusual bulges in his pants, for example?

12 A. With the exception of the cash, no.

13 Q. With the cash in the pocket?

14 A. Yes.

15 Q. But no other bulges that you observed?

16 A. Not that I observed.

17 Q. And when Detective Gonzalez felt something that he thought
18 was odd or weird or out of place, what happened next?

19 A. When he told -- before he told me to pat him again or
20 subsequent to that?

21 Q. Subsequent to that.

22 A. I can't remember. But ultimately, I believe, it was
23 Detective Gonzalez who found the drugs in his crotch.

24 Q. Did Detective Gonzalez ask the driver if he could reach
25 into his crotch area or his underwear?

1 A. I don't recall.

2 Q. Do you recall the driver resisting and saying, "Wait."
3 You know, "I don't want you searching my crotch"?

4 A. I don't recall.

5 Q. Okay. But, in any event, somebody donned the glove, a
6 rubber glove of some kind, right?

7 A. Yes.

8 Q. And undid the front of the driver's pants and reached into
9 his underwear?

11:52 10 A. Yes.

11 Q. Okay. And your recollection is that that was Detective
12 Reardon, not Detective Gonzalez?

13 A. Right.

14 Q. Okay.

15 A. Detective Reardon retrieved it. I don't know if Detective
16 Gonzalez did it initially, but he didn't -- I don't recall
17 Detective Gonzalez having gloves on either, and I know I didn't
18 have gloves on.

19 Q. So would I be correct, Special Agent, that effectively
11:53 20 there was an initial pat down by you? There was a second pat
21 down by you, correct?

22 A. Right.

23 Q. There was also kind of a simultaneous pat down by
24 Detective Gonzalez on the other side?

25 A. Yes.

1 Q. And then there was basically a full-blown search of this
2 guy's underwear?

3 MR. PANICH: Objection.

4 BY MR. KELLY:

5 Q. I mean, it had ceased to be a pat down of the exterior
6 clothing. They reached in?

7 MR. PANICH: Same objection.

8 THE COURT: What's the objection?

9 MR. PANICH: Sorry. I withdraw the objection.

11:53 10 BY MR. KELLY:

11 Q. At some point after these pat frisks, somebody donned a
12 glove and reached right into his underwear, correct?

13 A. Ultimately, they did, yes.

14 Q. Yes. Okay. And it was only at that point, after they
15 pulled out some bag or whatever, that he was placed under
16 arrest?

17 A. Yes.

18 Q. So he had not been placed under arrest until after the
19 discovery of the item in the underwear?

11:53 20 A. Of the drugs, no.

21 Q. Okay. He was certainly not free to leave, however, from
22 the moment of the traffic stop. And, in fact, he was
23 physically restrained by Detective Gonzalez?

24 A. Yes.

25 Q. So he was in custody but not formally arrested?

1 MR. PANICH: Objection.

2 THE COURT: I don't know really what the difference
3 is.

4 BY MR. KELLY:

5 Q. Well, he was not free to leave, but he hadn't been
6 formally placed under arrest?

7 A. Correct.

8 Q. And then what happened after he was placed under arrest?

9 A. He was placed under arrest; he was handcuffed; and we
11:54 10 waited for a transport vehicle.

11 Q. Okay. And how long did you have to wait for the transport
12 vehicle?

13 MR. PANICH: Objection, scope.

14 THE COURT: What's the objection?

15 MR. PANICH: Scope. This goes after the point of
16 harassment. I'm not sure what this has to do with --

17 THE COURT: I don't know what the purpose of it is,
18 but I'll allow that question.

19 BY MR. KELLY:

20 Q. How long did you wait for the transport vehicle to arrive?

21 A. I'm not sure. It could have been a few minutes. There
22 were other officers there. Like, Detective Reardon was not
23 riding with us. I think there was a delay that we were trying
24 to decide -- we were asking the command post in this operation
25 whether the U.S. Attorney's office was going to charge

1 Mr. Jimenez or whether he was going to be charged in Lawrence
2 District Court.

3 Q. But during the time that you were waiting for the
4 transport vehicle to arrive, you engaged in conversations with
5 the driver?

6 MR. PANICH: Objection. Relevance, scope.

7 THE COURT: I don't know where you are going.

8 MR. KELLY: I can connect this, Your Honor, because it
9 relates to the next witness, so it's important.

11:55 10 THE COURT: I thought this was the only witness we
11 had.

12 MR. KELLY: We have a very short five-minute witness.

13 MR. PANICH: His witness, Your Honor, not mine.

14 THE COURT: Well, I'll allow it de bene.

15 BY MR. KELLY:

16 Q. Did you engage in conversation with the driver?

17 A. I did.

18 Q. And you were effectively asking the driver to cooperate
19 with you?

20 A. Yes.

21 Q. And he didn't have anything to offer?

22 A. He told me he did not.

23 Q. Okay. And when the transport vehicle arrived, it was
24 actually Special Agent Weidlich who was part of that transport
25 team?

1 A. I believe so. I'm not sure if he arrived in that vehicle
2 or if he was there and then left in that vehicle. I know
3 ultimately he did. Whether he arrived in the van or he was
4 there previous in the vehicle, I don't remember what vehicle he
5 was riding in that day.

6 Q. After the driver was placed formally under arrest,
7 after you told him he was under arrest, was he handcuffed?

8 A. He was --

9 Q. At that point handcuffed?

11:56 10 A. I believe so.

11 MR. PANICH: Just for the record, I understand that
12 you are letting this in de bene?

13 THE COURT: I'm not sure where you're going,
14 Mr. Kelly.

15 MR. KELLY: I'm almost done, Your Honor.

16 THE COURT: It's all de bene.

17 BY MR. KELLY:

18 Q. He was handcuffed. At that point, sir, did either you or
19 Detective Gonzalez read him his rights?

11:56 20 A. No.

21 Q. And do you know when he was next read his rights?

22 A. Based on what I learned from Detective -- Special Agent --

23 THE COURT: That certainly is hearsay.

24 MR. KELLY: I'm sorry?

25 MR. PANICH: It's hearsay.

1 THE COURT: You don't know of your own -- based on
2 your observation?

3 THE WITNESS: I didn't Mirandize him myself, no.

4 THE COURT: Did you see anybody doing it other than
5 Mr. Gonzalez early on?

6 THE WITNESS: I don't recall seeing anyone Mirandizing
7 him.

8 BY MR. KELLY:

9 Q. So at no point during your interaction did you provide
11:57 10 Miranda warnings to the driver?

11 A. I did not.

12 MR. KELLY: No further questions, Your Honor.

13 THE COURT: Any redirect?

14 MR. PANICH: Very briefly.

15 REDIRECT EXAMINATION

16 BY MR. PANICH:

17 Q. Special Agent Cacace, you testified earlier that it was
18 not necessarily typical in your FBI experience to read Miranda
19 rights at the outset of interaction with the suspect; is that
11:57 20 fair?

21 A. That's fair.

22 Q. What experience --

23 A. If the subject wasn't originally under arrest, yes.

24 Q. What experience do you have with Lawrence Police
25 procedures?

1 A. Not that often. I don't know that I've ever been in a
2 probable cause arrest with Lawrence PD prior to this
3 initiative.

4 Q. Who activated the lights and sirens? Was it you or
5 Detective Gonzalez?

6 A. Detective Gonzalez.

7 Q. And during the -- during the course of the questions that
8 Detective Gonzalez asked to Mr. Jimenez, where were you
9 looking? At Detective Gonzalez? At Mr. Jimenez?

11:58 10 A. Mr. Jimenez and the right side of -- my area of
11 responsibility was on Mr. Jimenez's right side as he sat in the
12 Kia automobile.

13 Q. And why was your focus on that side?

14 A. Because that's where I was standing. And if he had moved
15 for something on the right side, it was my responsibility to
16 either take action or alert Detective Gonzalez or intervene of
17 some sort. My responsibilities were what I could see. I
18 couldn't see across his left side of his body.

19 MR. PANICH: Nothing further, Your Honor.

11:59 20 THE COURT: Any recross?

21 MR. KELLY: No, Your Honor.

22 THE COURT: Thank you, Mr. Cacace. You're excused.

23 Who's next?

24 MR. PANICH: No further witnesses from the Government.

25 MR. KELLY: We call Special Agent Weidlich, very

1 briefly, Your Honor.

2 THE COURT: How do you spell his name?

3 MR. KELLY: W-e-i-d-l-i-c-h, Weidlich.

4 THE CLERK: May I ask you to raise --

5 (Witness sworn.)

6 THE WITNESS: I do.

7 THE CLERK: Okay. Sir, may I ask you, please, to
8 state your name, spelling your last name for the record,
9 please, sir.

12:00 10 THE WITNESS: Keith Weidlich, W-e-i-d-l-i-c-h.

11 THE COURT: W-e-i-d-l-i-c-h?

12 THE WITNESS: Correct.

13 THE COURT: Thank you.

14 KEITH WEIDLICH, having been duly sworn by the Clerk,
15 was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MR. KELLY:

18 Q. Good morning, Special Agent Weidlich, can you tell us how
19 you're employed, sir?

12:00 20 A. I'm employed by the FBI.

21 Q. Okay. How long have you been with the FBI?

22 A. About 11 years.

23 Q. And what's your current position?

24 A. I work in Lowell on a drug task force.

25 Q. And how were you employed as of July 10th of 2019?

1 A. The same, on that task force in Lowell.

2 Q. Okay. And do you occupy -- or on that date did you occupy
3 a supervisory role?

4 A. I did not.

5 Q. You did not?

6 A. No.

7 Q. Were you just a task force agent?

8 A. Correct.

9 Q. And were you working on July 10th, 2019?

12:01 10 A. Yes, I was.

11 Q. And what area were you working in?

12 A. We were working in Lawrence.

13 Q. And can you tell us approximately how many other law
14 enforcement officers were working with you that day?

15 A. Just on my task force or just Lawrence?

16 Q. Well, do your task force first.

17 A. I would approximate there were nine to ten.

18 Q. Okay.

19 THE COURT: I'm sorry?

12:01 20 THE WITNESS: Nine or ten.

21 BY MR. KELLY:

22 Q. Okay. And were you partnered with a specific officer or
23 agent?

24 A. I was.

25 Q. And who was that?

1 A. That was Robert Heffernan.

2 Q. Heffernan?

3 A. Yes.

4 Q. What time did you start your day that day?

5 A. I would say approximately 9:00 a.m.

6 Q. Okay. And this event that we're talking about here in
7 this case, and I'm going to ask you a couple of questions about
8 momentarily, took place at or shortly after 5:00 p.m., correct?

9 A. That's correct.

12:02 10 Q. And fair to say that between the hours of 9:00 a.m. and
11 5:00 p.m. that you were basically patrolling around the area
12 looking for other suspicious activity?

13 A. Correct.

14 Q. And are you the case agent on this particular case
15 involving Mr. Jimenez?

16 A. I am.

17 Q. And so that means you're responsible for having sworn out
18 the affidavit for the criminal complaint for the search
19 warrant, things of that nature?

12:02 20 A. Correct.

21 Q. And to have filed your own FBI-302 report?

22 A. Correct.

23 Q. Now, you were not involved in the actual stopping of the
24 vehicle, this black Kia automobile, on this particular day,
25 correct, sir?

1 A. No, I wasn't.

2 Q. Okay. And prior to the stopping of that vehicle in the
3 vicinity of this Nyhan Bridge, had you been involved in making
4 any observations of either the black Kia or another
5 dark-colored Buick?

6 A. No, I wasn't.

7 Q. Okay. So when were you first called and asked to assist
8 in this matter?

9 A. I was there the whole time this incident was taking place.
12:03 10 I'm only aware of what took place through radio transmissions
11 or through the limited radio transmissions we had that day.

12 Q. Okay. So you weren't following cars or surveilling people
13 walking or anything like that?

14 A. Neither the Kia or the brown sedan, no.

15 Q. Okay. But you were out on the streets; you were in the
16 neighborhood?

17 A. Correct.

18 Q. Were you in a car?

19 A. I was.

12:03 20 Q. And you know, first of all, that one of the two cars that
21 they were focused on at this time after 5:00 p.m., this Buick,
22 dark-colored Buick, they lost it. It got away and nobody saw
23 where it went?

24 A. Yes, I'm aware.

25 Q. And the same thing is true of the passenger from that car

1 that was walking; at some point surveillance officers lost the
2 person?

3 A. Correct.

4 Q. Okay. So when -- who calls you to the scene of where the
5 vehicle is stopped?

6 A. So I don't recall if I heard a radio transmission that
7 something had happened or someone had called me on the phone to
8 tell me of the car stop. I did not initially know of the car
9 stop due to the radio issues.

12:04 10 Q. Okay. So you effectively play the role of -- you
11 transport the driver of the Kia from the location from which he
12 was placed under arrest by the bridge back to the police
13 station in North Andover, correct?

14 A. Yes, sir.

15 Q. So why did they take him to North Andover if this took
16 place in Lawrence, by the why?

17 A. North Andover is a federal holding facility. So due to
18 the time and stuff, we can process him there. If he's held
19 over by the court for the morning, he can stay there.

12:05 20 Q. So what kind of a car -- so you took custody of the driver
21 from the officer that had made the stop and arrest, and you
22 were responsible from that point until they got him to the
23 station?

24 A. Yes, that's correct.

25 Q. And what kind of a vehicle were you transporting him in?

1 A. I believe it was a minivan, sir.

2 Q. A minivan?

3 A. Yes.

4 Q. And were there any other persons, other than you and your
5 partner, in that minivan on this occasion?

6 MR. PANICH: Objection. I've let this go a little
7 bit. But, again, I think this goes to relevance.

8 THE COURT: I don't know yet.

9 BY MR. KELLY:

12:05 10 Q. Was there anybody else in the van besides you and your
11 partner and the driver once you placed him in the van?

12 A. No.

13 Q. Okay. And what did you do -- did you have any
14 communication or interaction with the driver once he was seated
15 inside the van?

16 A. Yes, I did.

17 Q. Tell us about that.

18 MR. PANICH: Again, relevance.

19 THE COURT: What is the relevance?

12:05 20 MR. KELLY: I'm going to come to that in just a
21 second.

22 MR. PANICH: And it's also --

23 MR. KELLY: I'll try to speed --

24 MR. PANICH: It's also hearsay because he's asking
25 about the defendant's statements.

1 MR. KELLY: It's a suppression hearing, Your Honor.

2 THE COURT: I'm sorry?

3 MR. KELLY: I can move it along fairly quickly, Your
4 Honor, with just a few pointed questions.

5 THE COURT: Okay.

6 BY MR. KELLY:

7 Q. Once the driver got into the van, you asked the driver
8 whether he had been given his Miranda rights, correct?

9 A. It would have been, yes, "Were you ever?" or "Have you
12:06 10 ever?"

11 Q. And the driver told you, no, that he had not been given
12 his Miranda rights; fair to say?

13 MR. PANICH: Objection.

14 THE COURT: Wait a minute. Which driver is this?

15 MR. KELLY: I'm sorry, Your Honor. I will be more
16 clearer.

17 BY MR. KELLY:

18 Q. Do you recognize the person who you transported that day
19 in the courtroom here today?

12:06 20 A. Yes, sir.

21 Q. And how is he dressed?

22 A. He has a green-and-black plaid jacket on.

23 Q. That's the person you transported that we've been talking
24 about, correct?

25 A. Yes, sir.

1 Q. After you placed Mr. Jimenez, the driver, into the van,
2 you asked him whether he had been provided with his Miranda
3 rights; did you not?

4 A. Not in that way.

5 Q. Okay. But you asked him the question, perhaps not in
6 those words?

7 A. Yes.

8 THE COURT: What did you ask him?

9 THE WITNESS: Your Honor, it would have been, "Have
12:07 10 you ever?" or "Were you ever read your Miranda rights?" It's a
11 holdover from my training when I was a cop earlier.

12 BY MR. KELLY:

13 Q. And how did he respond?

14 MR. PANICH: Objection, hearsay.

15 THE COURT: No, I'll allow it.

16 BY MR. KELLY:

17 Q. How did he respond?

18 A. I don't recall him responding at all.

19 Q. Okay. You don't recall him saying "No"?

12:07 20 A. No. This is a process --

21 THE COURT: No, I don't think we go that --

22 BY MR. KELLY:

23 Q. All right. So you don't recall him responding at all.

24 What did you next do?

25 A. I re-Mirandaed.

1 Q. And did you have him sign anything?

2 A. No. I had the Miranda card with me.

3 Q. To your knowledge, was the defendant ever asked to sign a
4 form by you acknowledging his Miranda rights?

5 A. Not by me.

6 Q. Why did you feel the need to provide Mr. Jimenez with his
7 Miranda rights at that time?

8 MR. PANICH: Objection.

9 THE COURT: I don't think we need to get into that.

12:08 10 BY MR. KELLY:

11 Q. Well, had you been told by the officers at the scene that
12 you were taking custody of the driver from whether they had
13 already provided him with his Miranda rights?

14 MR. PANICH: Objection. Calls for hearsay.

15 MR. KELLY: It's a suppression hearing, Your Honor.

16 The rules --

17 THE COURT: I'll allow it.

18 BY MR. KELLY:

19 Q. Had you asked the officers at the scene whether they had
12:08 20 provided Miranda rights to the defendant?

21 MR. PANICH: It's also a leading question, Your Honor.

22 MR. KELLY: I am trying to move it along, Your Honor.

23 THE COURT: I'm sorry?

24 MR. KELLY: Let me ask the question again.

25 BY MR. KELLY:

1 Q. Had you asked the officers at the scene from whom you took
2 custody of Mr. Jimenez whether they had provided him with his
3 Miranda warnings?

4 THE COURT: He can answer that "Yes" or "No" or "I
5 don't know."

6 A. No, I did not.

7 BY MR. KELLY:

8 Q. You did not ask them?

9 A. Correct.

12:09 10 Q. And so you -- as of the time you step into the van, you
11 did not know whether he had been Mirandized?

12 A. That's correct.

13 Q. And that was the reason why you felt the need to provide
14 him with his Miranda warnings?

15 MR. PANICH: Objection.

16 THE COURT: The objection is sustained.

17 BY MR. KELLY:

18 Q. When you -- when you completed -- you recall that you
19 swore out under oath an affidavit in support of the criminal
12:09 20 complaint the very next day, July 11th, 2019, correct? Do you
21 recall that?

22 A. That's correct.

23 Q. And you described certain things that took place out on
24 the street in connection with this stop, in your affidavit?

25 MR. PANICH: Objection. This is all calling for

1 hearsay. I'm sorry to be a --

2 MR. KELLY: I'm asking him about his own sworn
3 testimony and in an affidavit which he supplied to the court.

4 MR. PANICH: Which was, I think, almost entirely based
5 on hearsay.

6 THE COURT: This is an affidavit that's filed in
7 conjunction with this motion?

8 MR. KELLY: It's filed in conjunction with the
9 criminal complaint that was first filed prior to the indictment
12:10 10 in this case, Your Honor.

11 THE COURT: How does that come into evidence in this
12 proceeding now?

13 MR. KELLY: Well, again, Your Honor --

14 THE COURT: I mean, you can certainly ask him about
15 any substance that has to do with the incident of the stopping
16 of the car and the arrest and so on.

17 MR. PANICH: And I would respectfully suggest, Your
18 Honor, that he's already testified he wasn't present.

19 THE COURT: Well, I mean, if he has any more questions
12:11 20 about that, he can do that.

21 But try to do it without invoking earlier testimony
22 that may not be admissible by itself.

23 BY MR. KELLY:

24 Q. And in connection with the preparation of your sworn
25 affidavit, who did you obtain information from?

1 A. Several of the officers that were there.

2 Q. Okay. And did you speak with Special Agent Cacace, your
3 colleague?

4 A. I am sure I did, yes.

5 Q. And at any time did Special Agent Cacace tell you that he
6 had provided this defendant, Mr. Jimenez, with his Miranda
7 rights?

8 MR. PANICH: Objection. It's calling for more
9 hearsay.

12:11 10 THE COURT: Well, we have Mr. Cacace's testimony. We
11 have Mr. Gonzalez's testimony. They were both cross-examined.
12 So I think what happened long after that in any conversation
13 between Mr. Cacace or Mr. Gonzalez and Mr. Weidlich is sort of
14 not relevant. I mean, it's not admissible. You may sit down.

15 BY MR. KELLY:

16 Q. The information that you -- contained within the affidavit
17 that you filed with the court was not information -- and I'm
18 talking about the information relative to the stop and what
19 took place at the street there, was information that you had no
12:12 20 personal knowledge of?

21 A. I did have personal knowledge of, based on the radio
22 transmissions. I did not observe a lot of these things, if
23 that's what you're referring to.

24 Q. But in terms of what took place after they stopped the car
25 and their interactions with the driver which were not part of

1 the radio transmissions, you had no direct personal knowledge
2 of what transpired at the roadside?

3 A. Correct.

4 THE COURT: Excuse me. This affidavit is not part of
5 this proceeding today. It's not evidence in this proceeding
6 today.

7 MR. KELLY: I understand, Your Honor. It's just that
8 there are inconsistencies between what he said and what's in
9 here.

12:13 10 THE COURT: Well, if you want to point out
11 inconsistencies, you can certainly do that. I mean, you can
12 use his prior statement to show inconsistency, but that's not
13 really what you're doing.

14 MR. KELLY: Actually, you know what, Your Honor? I'm
15 finished. No further questions of this witness.

16 THE COURT: Okay. And you don't have any questions?

17 MR. PANICH: I do not.

18 THE COURT: Thank you, Mr. Weidlich. You're excused.

19 THE WITNESS: Thank you, Your Honor.

12:13 20 THE COURT: Who is next?

21 MR. KELLY: That's it from us.

22 THE COURT: Now, do Counsel wish to argue? Or should
23 I rely on your briefs? Is the affidavit part of this
24 proceeding now?

25 MR. PANICH: No, Your Honor.

1 THE COURT: There's no affidavit?

2 MR. PANICH: Correct.

3 MR. KELLY: Well, there is an affidavit from
4 Mr. Jimenez, Your Honor, which is attached to our motion in
5 memorandum.

6 MR. PANICH: Which, Your Honor, I think there's clear
7 case law it's not admissible, given the fact that they haven't
8 offered him as a witness.

9 THE COURT: Whose affidavit is this, Mr. Kelly?

12:14 10 MR. KELLY: Attached to our motion in memorandum is an
11 affidavit of the defendant as to what transpired.

12 MR. PANICH: Your Honor, *United States versus --*

13 THE COURT: How can I use the affidavit if he doesn't
14 testify? Does he waive his Fifth Amendment rights by relying
15 on an affidavit that is his statement?

16 MR. KELLY: I mean, it is his sworn statement, Your
17 Honor, under oath as to what transpired there at the --

18 THE COURT: I understand that, but I assume he's not

19 testifying in order to preserve his Fifth Amendment rights.
20 And I'm not sure he can get around it by giving me a written
21 statement. I mean, I'll look into it, and I'll -- we'll mark
22 it for identification or as part of the record already, but I
23 am not sure that I can use it without his actually testifying.

24 MR. PANICH: And for Your Honor's help, I point you
25 to, I believe it's *United States v. Curry*, which is cited in

1 *United States versus Phillipos* in a more recent First Circuit
2 decision -- I think it's 2014 or thereabouts -- but I think
3 that's where addressing the issue that --

4 THE COURT: Well, I'm on notice that the defense would
5 like to use it, and I'm not sure that I can without
6 compromising -- well, I guess I can't because he's not actually
7 testifying.

8 MR. KELLY: Your Honor, I am happy if the Court will
9 permit us to be heard briefly.

12:15 10 THE COURT: Okay. So do Counsel want to file
11 additional written argument? Or do you wish to have argument
12 now or at another time? Or can I just take the papers based on
13 what I have heard?

14 MR. KELLY: I think you can take the papers as they've
15 been submitted.

16 THE COURT: The Government agrees?

17 MR. PANICH: Your Honor, I don't think I have anything
18 to add except that I think there are numerous ways to find in
19 favor of the Government here both on the Fourth Amendment issue
12:16 20 and Fifth Amendment issue.

21 With respect to the Fifth Amendment issue, there's
22 uncontested testimony that Detective Gonzalez read Mr. Jimenez
23 his Miranda warning at the outset of their encounter. And even
24 if he hadn't, which he had, I don't think, based on the factors
25 we cited to in our brief, he was in custody. Again, I think

1 the Miranda warnings solves this entirely. It's uncontested.

2 On the Fourth Amendment issue, the witnesses have
3 testified to all the things they observed prior to the car
4 stop. I won't belabor --

5 THE COURT: So you do want to argue to that extent?

6 MR. PANICH: I don't want to open the door to more
7 open argument. I do want to -- well, I'll point to the briefs.
8 I think it's laid out there. I won't say anything further.

9 THE COURT: Okay. So I will take the papers. And to
10 the extent that Mr. Kelly wants to rely on the affidavit of the
11 defendant, he may give me some law on that, but -- and you may
12 respond to his outline of the law.

13 MR. PANICH: So just for the case cite, Your Honor,
14 *Phillipos* is 849, F.3rd 464. And that discusses, I believe
15 it's *Curry* therein, which addresses the issue.

16 MR. KELLY: Your Honor, if I could be heard briefly.
17 First of all, I'll remind the Court that we still have this
18 open issue of the cell phone, and there's somewhat conflicting
19 testimony here now in terms of, you know, at what point was
20 this cell phone turned on and how much of this encounter was
21 captured on audio and/or video.

22 I suggest for the Court that in this instance it would
23 be enormously helpful to the Court to have access to something
24 which actually documents what actually took place there on the
25 street.

1 And even if at some point they moved the phone, no one
2 has testified that they turned it off, and it is highly likely
3 that some of the audio continued to be picked up.

4 And so, again, I would renew our requests that the
5 Court direct that that video be extracted from that phone,
6 either by a neutral third party or in some mechanism.

7 And, of course, we object to their counter motion,
8 which is that we have to turn over what's in his brain, his
9 password, and give up the entire contents of the phone, which I
12:18 10 think is completely in violation of the Fifth Amendment.

11 MR. PANICH: So two points, Your Honor.

12 First, I think the testimony is pretty clear that the
13 phone stayed in the car. And so whatever happened outside the
14 car, I don't think is going to be within the view of the video.
15 And, I mean, I understand Mr. Kelly's point that it still may
16 have picked up audio from -- but I just, for context, we are
17 talking about a phone that's in the driver's seat area of the
18 console and a discussion, pat frisks that are happening at the
19 back of the car.

12:18 20 THE COURT: Well, there was an earlier issue of the
21 Miranda.

22 MR. PANICH: So I don't specifically recall what
23 Detective Gonzalez said in terms of the sequence of events. My
24 understanding was --

25 THE COURT: He said he went to the door; he opened the

1 door; and he read the Miranda.

2 MR. PANICH: And I think he turned the phone on after.

3 THE COURT: That was today's testimony, as I
4 understand it.

5 MR. PANICH: But in terms of when the phone was
6 activated, I was under the impression it was after. But,
7 again, I may be mistaken about that.

8 THE COURT: Well, the government, as I understand it,
9 is insisting that only the FBI can open this. It's a secret
12:19 10 place that the defendant can't even attend and watch.

11 MR. PANICH: It's our position, Your Honor, that only
12 the Government can execute a search warrant, and a vendor
13 cannot execute a search warrant.

14 THE COURT: The Government hires people all the time
15 to do this sort of thing.

16 MR. KELLY: A vendor can certainly execute a court
17 order.

18 THE COURT: Hold it, Mr. Kelly. At the moment I'm
19 with you. I mean, it seems to me that the defendant has
12:19 20 certain rights. He clearly has rights that prevent you at the
21 moment from looking at the thing. Both of you want to look at
22 it. So it behooves counsel to work out a mechanism whereby
23 both parties can be privy to the examination of the opening of
24 this cell phone.

25 MR. PANICH: And I know that I've made this point

1 before, Your Honor, so I apologize for repeating myself, but
2 our position is that the video can be accessed if he inputs his
3 password outside the view of the Government, which the Court
4 has the power to order, and that accomplishes the same thing.

5 We then -- the FBI images the phone after he inputs
6 the password. We don't know what the password is, so it avoids
7 the Fifth Amendment issue, but you can issue that order under
8 the All Writs Act.

9 THE COURT: I don't quite understand. You want him to
12:20 10 give you the password --

11 MR. PANICH: No, Your Honor.

12 THE COURT: -- and then trust --

13 MR. PANICH: No, Your Honor. I don't want him to give
14 me the password. I want him to input the password outside our
15 view so we can't see what the password is.

16 THE COURT: Give it to whom?

17 MR. PANICH: Back to the FBI so they can image it.

18 THE COURT: But that's you -- I mean, that's all the
19 government.

12:21 20 MR. PANICH: I don't think there's a problem with
21 constitutionally --

22 THE COURT: The problem is that people don't all trust
23 the government, especially now.

24 MR. PANICH: I certainly can't endorse that position,
25 Your Honor.

1 THE COURT: I'm not saying what I think. But I don't
2 understand why the password can't be given to an independent
3 person who is neither Government nor defendant and who is sworn
4 to secrecy.

5 MR. PANICH: So I think the Government has made its
6 position clear. We understand. You will order what you will
7 order, but we can't agree to that.

8 THE COURT: You cannot what?

9 MR. PANICH: We cannot agree to take that approach.

12:21 10 THE COURT: But I can order it?

11 MR. PANICH: I don't believe that that's the right
12 decision here, but we understand that that's what you may do.

13 THE COURT: What if the government were to choose an
14 independent person, not a member of the FBI?

15 MR. PANICH: Your Honor, I am sorry, but I can't agree
16 to that procedure. We will -- we respect the fact that --

17 THE COURT: If I order it?

18 MR. PANICH: Well --

19 THE COURT: I'll order it to be done by an independent
12:22 20 person, and that person can be chosen by the Government but
21 can't be an FBI agent.

22 MR. PANICH: And I understand that you may order that.
23 All I'm saying is we're not going to consent with it.

24 THE COURT: You won't carry it out?

25 MR. PANICH: No, no, I'm not saying that. We may

1 explore further appellate options. I'm just saying we are not
2 going to concede that that's legally appropriate so that -- to
3 avoid the issue.

4 THE COURT: So the only solution is the one the
5 government wants, that the FBI looks at it?

6 MR. PANICH: From our -- I think what I've laid
7 out --

8 THE COURT: What kind of security can you give to the
9 defendant that that's where it's going to stay; it doesn't go
12:22 10 to the U.S. Attorney's Office?

11 MR. PANICH: Well --

12 THE COURT: At least until such time as in the regular
13 course of the trial it gets there?

14 MR. PANICH: If that is what Your Honor wants to
15 order, I am going to comply with the court order unless we seek
16 appellate review. I'm not going to sit here and tell you that
17 I'm not going to comply with the court order. I'm saying we
18 are going to comply with the order --

19 THE COURT: I'm desperately trying to find an
12:23 20 in-between where the government doesn't insist that only the
21 government gets to look at this thing, at the results of this
22 cell phone recording or not.

23 MR. PANICH: I understand, Your Honor.

24 THE COURT: Do you really want us to trust the
25 government?

1 MR. PANICH: Well, the government executes search
2 warrants every day. And so, yes, I would.

3 THE COURT: What's going to prevent the press release
4 from being held to tell us all about what the contents of this
5 iPhone are?

6 MR. PANICH: Your Honor, as you're well aware, there
7 is a local Rule 83.2A, I think, that deals with what the United
8 States -- what any parties to litigation can say about a
9 pending litigation. We have every intention of complying with
12:24 10 that order.

11 THE COURT: I have no doubt that you will.

12 MR. PANICH: I'm sorry?

13 THE COURT: I have no doubt that you will, you
14 personally.

15 MR. KELLY: Your Honor, may I be heard briefly?

16 THE COURT: Yes.

17 MR. KELLY: And, again, with respect to the phone, my
18 position is, as I've stated in writing and otherwise, that I
19 just think the Court ought to have the best evidence of what
12:24 20 took place, and there's nothing better than having an actual
21 video recording. And they do it all the time when they do drug
22 cases so...

23 But they can't compel the contents of his brain,
24 whether it's, you know, to secretly give somebody the password.
25 I mean, that's a clear violation of the Fifth Amendment.

1 But with respect to this motion to suppress, Your
2 Honor, we have three basic arguments.

3 One, that there was no reasonable suspicion to justify
4 this stop. What do they base the stop of the car on? They
5 base it on the fact that this was allegedly a high crime area.
6 They base it on the fact that when they ran the search, this
7 Detective Gonzalez found out that this rental car company
8 rented to drug dealers and some allegations about furtive
9 gestures or suspicious movements within a car.

12:25 10 I suggest to Your Honor that the evidence is that this
11 was a residential area bounded on one side by a set of train
12 tracks. It was not some run-down area. The rental car company
13 is a legitimate, currently operating, functioning rental car
14 company that rents cars to all kinds of people. And they don't
15 ask people whether they are involved in bad things.

16 Their allegations of seeing furtive gestures in the
17 car, I think lack credibility. I mean, you know, looking
18 through the rear of that vehicle's window, you can't see -- you
19 might be able to see a set of eyes in a rearview mirror.

12:26 20 There's nothing suspicious about a driver -- put
21 yourself in the position of this particular driver, a car with
22 two guys in it, you know, races by him a couple of times
23 looking at him. He doesn't know if they are gang members, bad
24 guys, police officers. He doesn't know what they are.

25 They come racing up behind him, you know, before this

1 bridge. And anybody would look in the rearview mirror to
2 figure out what's happening behind him.

3 He hadn't violated any traffic laws. And there was
4 frankly no reasonable basis to stop the car in the first
5 instance.

6 Second argument, they had no reason to believe that he
7 was armed and dangerous. They conducted multiple pat frisks.

8 They found nothing which resembled a weapon, whether a gun or a
9 knife. What do they say? They say at some point, either the
12:27 10 second or third pat frisk, they find some weird, out-of-place
11 object in his groin area. And at that point, it's no longer a
12 pat frisk. He hasn't been placed under arrest. It's a
13 full-blown search of his underwear, which you can only do in
14 two contexts: One, he's been arrested and you can search him
15 incident to arrest, or you get a search warrant. You can't
16 just reach into somebody's underwear on the side of the street
17 after you stop the motor vehicle.

18 There was no basis for suspicion of armed and
19 dangerous. And even if it was, it had been dispelled by the
12:27 20 two or three pat frisks that had already been conducted. He
21 was cooperative and polite and civil to the officers at the
22 scene.

23 Finally, Your Honor, with respect to the Miranda
24 warnings, I don't buy for a moment that any police officer,
25 whether you've been on the force for four years or 25 years,

1 that the first thing that you do when you walk up to a car that
2 has the windows closed and doors shut and locked that you read
3 somebody his Miranda rights. It's completely illogical that
4 anybody would do that. I think it's a fabrication that they
5 provided Miranda warnings before they did or said anything
6 else. It makes no sense. And, in addition, after they
7 place --

8 THE COURT: If the phone was on, we would hear it.

9 MR. KELLY: If the phone was on, you would hear it and
12:28 10 you could see it. I believe what the phone would show, Your
11 Honor, is that they -- you know, of course, Detective Gonzalez
12 says they pull up and parallel park, and his partner says they
13 did what I suggested they did, which is they cut across the
14 front at an angle.

15 They come running back to the car. They say, "Shut
16 your car off." I'm sure it wasn't super polite.

17 He puts his hands up like this and says, "What's going
18 on? Don't shoot me. I want to turn on my phone for my safety
19 and yours," and he starts recording.

12:28 20 And it would tell us whether or not they provided
21 Miranda warnings through a closed window or not. I think it's
22 ridiculous that they would do such a thing.

23 And then, finally, after they arrest him, formally
24 arrest him, there's no indication that they provided him with
25 Miranda warnings. They don't say they Mirandized him again.

1 The first time he gets Mirandized is when he gets
2 asked by this Special Agent Weidlich, "Have you been read your
3 rights?" He claims he didn't respond.

4 I suggest that may not be exactly right, but he
5 provides him with his rights in the van for the first time.
6 Everything that precedes this is just not credible, Your Honor.
7 It just makes no sense.

8 And, of course, they altered the sequencing of those
9 things because they recognize after the fact that if they don't
12:29 10 have Miranda warnings at some point, they kind of lose all of
11 their probable cause to do the searches, and everything falls
12 apart. But that's what happened here.

13 So our claim is there was no basis to stop. They went
14 well beyond what's permissible by way of a pat frisk, and the
15 claim of having given Miranda warnings from the outset is
16 laughable. It didn't happen. And there's a clear Fifth
17 Amendment violation, Your Honor.

18 And for all those reasons, I believe the Court should
19 seriously consider granting the motion.

12:30 20 THE COURT: I have another idea about the cell phone.
21 How would it be -- would the government be amenable to having
22 Mr. Jimenez go to the expert at the FBI? He opens the phone in
23 the presence but not in view of the FBI agent; the FBI agent
24 does whatever extraction he makes and gives the phone -- I
25 guess you are entitled to the phone, but then it gets locked up

1 again, and the FBI has a locked-up phone. Is that something
2 that could work?

3 MR. KELLY: We could work with that, Your Honor.

4 MR. PANICH: I want to make sure I understand. So --

5 THE COURT: That is, the phone is not turned over with
6 a way to open the phone.

7 MR. PANICH: So it is --

8 THE COURT: It is opened by the defendant in the
9 presence of the FBI agent and then closed in the presence of --
10 by the defendant so that it can't be used again unless you in
11 some way break it down the line.

12 MR. PANICH: So if I understand Your Honor correctly,
13 and I'm with you, I think. But he opens the phone; the video
14 is extracted, and only the video; and then the phone is locked?

15 THE COURT: Right. I don't know whether it's video
16 and audio, as well.

17 MR. PANICH: It's one component.

18 THE COURT: Whatever, the event -- the recording of
19 the event is disclosed. Phone is locked again by the defendant
20 but in the custody of the U.S. Attorney's Office or the FBI who
21 have a right to have it, having taken it, unless, of course,
22 the entire issue -- the entire proceeding is improper, as
23 Mr. Kelly suggests.

24 MR. PANICH: So without getting -- so I think that
25 might be okay. What I would suggest is for -- give me an

1 opportunity to confer with the cybercrime folks of which I
2 spoke last time, and we can work with Mr. Kelly to do that, if
3 that's what we agree on.

4 THE COURT: Mr. Kelly, is that agreeable to you?

5 MR. KELLY: It is, as long as we're talking about
6 extracting just the piece that we're looking for, the video?

7 THE COURT: Yeah.

8 MR. KELLY: Absolutely we can work with that, Your
9 Honor.

12:32 10 MR. PANICH: And to avoid responding to everything
11 Mr. Kelly said, because I promised I wouldn't, I would just
12 point Your Honor to the brief which I think does that.

13 THE COURT: Okay. So I will take the papers on the
14 motion to suppress. I will ask Counsel to work out the
15 mechanism for viewing this. And I guess there may be stuff on
16 the cell phone that is relevant to the motion that I now have
17 to decide, correct?

18 MR. PANICH: I believe so.

19 THE COURT: I think it would be helpful, Mr. Panich,
12:32 20 if you could get us a reasonably quick answer. Let us know how
21 long it will take to do this; and for counsel, both of you, to
22 decide whether any piece of it is appropriate for me to see in
23 conjunction with this motion.

24 MR. PANICH: So --

25 THE COURT: That is, with a motion to suppress.

1 MR. PANICH: I'm confident, Your Honor, we can do that
2 very quickly.

3 THE COURT: Okay. So maybe -- let's see -- maybe by
4 the end of next week or maybe even at the end of this week you
5 can tell me whether it's feasible, and then give me a date as
6 to when something would be available that you might want to
7 submit to the Court.

8 MR. PANICH: I think that's imminently reasonable,
9 Your Honor.

12:33 10 THE COURT: Okay. Agreeable?

11 MR. KELLY: Yes, it's agreeable, Your Honor.

12 THE COURT: We've got a solution. Thank you.

13 MR. PANICH: Thank you very much.

14 MR. KELLY: Thank you, Your Honor.

15 THE COURT: And we are in recess until 2:00.

16 (Adjourned, 12:33 p.m.)

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1 CERTIFICATE OF OFFICIAL REPORTER
23 I, Linda Walsh, Registered Professional Reporter
4 and Certified Realtime Reporter, in and for the United States
5 District Court for the District of Massachusetts, do hereby
6 certify that the foregoing transcript is a true and correct
7 transcript of the stenographically reported proceedings held in
8 the above-entitled matter, to the best of my skill and ability.9 Dated this 28th day of May, 2020.10
11
12 /s/ Linda Walsh13 Linda Walsh, RPR, CRR
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